The Solicitors' Journal

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Current Topics.

Law Officers and Knighthood.

THE announcement that His Majesty has been pleased to approve that the honour of knighthood be conferred upon Mr. TERENCE JAMES O'CONNOR, on his appointment as Solicitor-General, is in accordance with the rule laid down by GEORGE III that the Attorney-General, the Solicitor-General, and the judges, if not "honourable" by birth, should be knighted, "to keep up the reputation of the ancient order of Knights-bachelors," and the King, in prescribing this rule, added that the ceremony of the accolade ought to be cheerfully undergone as an accompaniment of professional promotion. It would appear that it was not till JOHN SCOTT (whom we best remember as LORD ELDON) was appointed Solicitor-General that the rule became fixed, seeing that his predecessor in the office of Solicitor-General, ARCHIBALD MACDONALD, remained "plain Archy" till he was promoted to the higher post of Attorney-General. Several of those who later became judges rather recalcitrated against having to submit against their will to the accolade. Among these was Mr. Justice R. S. WRIGHT who made a gallant stand against the enforcement of the rule, but in the end was compelled to submit.

Jersey Law Officers.

A CHANGE in the *personnel* of the law officers in Jersey, consequent on the promotion of Mr. A. M. COUTANCHE to the office of Bailiff, is a fresh reminder not only of the curious title, so at least it seems to us, borne by the highest local judicial functionary in the island, but also of the fact that the customary law of the Channel Islands is based on that of Normandy, as contained in the "Grand Coustumier de Normandie," dating from the thirteenth century. In view of their past history, the relation of the islands to the Crown is in some ways peculiar. In his very erudite work, "The English Legal Tradition," Professor LEVY-ULLMANN, who occupies the chair of Comparative Law in the University of Paris, tells us that His late Majesty KING GEORGE V while on a visit to the islands was thus addressed: "Sire, we greet you, not as King, but as our Duke; for us you are not the King of England; you are the Duke of Normandy." With regard to their courts an appeal lies in civil matters to the Judicial Committee of the Privy Council, and in the current number of the "Law Reports" may be seen the report of a case from Jersey relating to the disposition of immovables and the respective jurisdictions of the Cour du Samedi and the Cour d'Héritage. Reverting to the office of Bailiff conferred upon Mr. COUTANCHE, it may seem odd that a title, designating the highest judicial post in Jersey, should with us describe a very humble functionary in the law, but the number and variety of titles, with consequent degrees of dignity, designating offices in different parts of the British Islands, is amazing. For example, Sheriff in England bears little resemblance to the judge bearing the same title in Scotland; and in the Isle of Man we have the curious title of Deemster as denoting a high judicial officer.

The Tithe Plan: Queen Anne's Bounty.

WE have so far refrained from dealing with the criticism directed from various quarters against the Government scheme for the extinguishment of tithe rent-charge—the main provisions of which were indicated in a "Current Topic" in our issue of 7th March—partly because a detailed account of the large number of objections which have been taken would have been out of place in this column and partly because much of the criticism which appeared shortly after the making public of the scheme was necessarily of a provisional character. Sufficient time has, however, now elapsed to permit of properly formulated comment, of which statements recently issued by the Tithe Committee of Queen Anne's Bounty and by the National Tithepayers' Association, which naturally exhibit the Government plan as viewed from opposite standpoints, are good examples. To these it is now proposed to make short reference. The committee expresses approval of the main feature of the Government's policy—the extinguishment of tithe rent-charge—but views with grave concern the reduction of income involved in the scheme. "The loss to beneficed clergy alone," it is stated, "amounts to over £345,000 yearly out of an aggregate present net tithe income of approximately £1,870,000—about 18½ per cent." The adoption of £91 11s. 2d. as representing the gross annual value of £100 tithe rent-charge (par value) as against the present stabilised figure of £105, is naturally the subject of a good deal of comment. This figure has been arrived at by taking the average of the septennial tithe figures, based on corn prices, for the years 1837–1916 (excluding the years of high prices after the war). But it is pointed out that if the figures up to 1936 were included, covering exactly 100 years, the average would have been £97 15s., while for the 100 years from 1817–1916, the average is approximately £97. Moreover, the figure chosen has been arrived at without any consideration of the subsidies—an important factor in the economic conditions of agriculture, in light of which the figures should, it is urged, have been determined—while it is suggested that there is no good

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reason for reducing the value of the tithe for extinguishment purposes in urban and industrial districts (one-eighth or one-ninth of titheable land is nor agricultural according to the estimate in the Report), nor does the Committee see any reason for the suggested reduction from £105 in respect of land on which the tithe rent-charge is less than (say) 2s. an acre (par value).

Compensation Provisions.

THE compensation provision contained in the proposal to make up the losses to the poorer clergy by a payment equal to £72,266 per annum for 60 years, or £2,000 000, is stated to be inadequate. Compensation for the losses of incumbents of livings not exceeding £500 in value would exhaust the £2,000,000 on a 3 per cent. basis (capital and income) in about 13 years. The possible reaction of the loss of benefice income on the foundations of clergy pensions finance under the Clergy Pensions Measures and the Older Incumbents Measures is alluded to, as is also the fact that the statutory liabilities of incumbents for repairs (involving on an average about £23 per benefice) and to repay loans for improvements and other purposes will continue. Whatever the final terms of extinguishment, there should, it is urged, at least be saved for the Church the value of the life interests of all the clergy affected by the proposals in the lost tithe income. Objection is taken to the reduction of the present term, with 76 years still to run, if the reduction causes loss or, as it is phrased, "injustice" to the tithe owner. While on the subject it may be noted that the suggestion that the tithe rent-charge in an area fully developed as urban property (the ownership being divided between a large number of persons), should be extinguished without compensation to the tithe owner is regarded as sheer confiscation of the tithe owner's property in order to get over a difficulty. If this provision stood alone there would, of course, be much to be said for the position adopted, but if the magnitude of the difficulty and the urgency of its solution as well as the insignificant yield from each property be kept in mind, it will be generally agreed that the Government was fully justified in dealing with it in the course of a scheme covering the whole question of tithe rent-charge. The statement contains a number of other important suggestions and criticisms to which it is impossible to refer here. Enough will have been said to show its general drift, which may be summarised as exhibiting approval, qualified by the view that means should be found to render the terms of the scheme less severe to those whose interests it is the business of the Bounty to protect.

Tithepayers.

CRITICISM of the Government Scheme from an opposite standpoint is contained in the recently issued statement by the Council of the National Tithepayers' Association which declares that the proposals may aggravate rather than end the tithe controversy and protests against what is described as the indiscriminate use of the law of averages. "As applied to tithe," it is said, "averages are not only useless but absolutely misleading. In the manner in which they are applied by the Commission and the Government they lead to the most indefensible conclusions." Thus the figure of £91 11s. 2d. arrived at in the manner already indicated is described as "purely arbitrary," and it is contended that if the average proposed by the Commission is to be taken as a basis, allowance should also be made for the additional burdens and responsibilities cast by the legislature on the tithepayers (the landowners) since the period named (1837–1916)—burdens and responsibilities of which the tithe-owners bear no part. Objection is also taken to the discrimination made in favour of the ecclesiastical tithe-owners in regard to deduction for rates in estimating the net annual value on which the capital value is based. If it is considered right to continue the existing discrimination in favour of such tithe-owners it is thought that the capital sum should be provided from the same source as the annual sum, namely from the National Exchequer. If it is determined to extinguish all tithe rent-charges, the consideration money payable by the tithe-payers should not, it is urged, exceed in the case of ecclesiastical tithe rent-charge the life interest of the present recipients, and in the case of lay tithe rent-charge either the estimated amount which would have been given if the tithe rent-charge had been offered for sale without restriction, or the amount at which, according to the Board of Inland Revenue, the tithe rent-charge would have been valued for death duties, or, in other words, about twelve to fourteen times the tithe rent-charge. The amount payable by the tithe-payers should, it is said, be limited to three shillings in the pound of the annual value of the land, the latter being the rental at which the land would be let to a tenant on an ordinary agreement of tenancy. Schedule B income tax valuation is objected to as a basis for remission. Difficulties of the rating authorities consequent on the Government plan are matters to be dealt with by the Government as a rating question. Tithe-payers as such ought not to be held responsible.

Compulsory Redemption.

THE National Tithepayers' Association regards compulsory redemption as, in itself, a grievance, and views with much apprehension the Royal Commission's recommendations as to compulsory redemption of the proposed annuities by payment of a lump sum. "However," the council's statement continues, "it is realised that there are peculiar circumstances about tithe, and many tithe-payers are prepared to contribute something if it is decided to do away with it by some capital payment, but the capital payment by tithe-payers must be something much less than that proposed by the Government if the scheme is to be acceptable to the association." Objection is taken to the proposal that what is described as "the compassionate payment for the benefit of the poorer clergy" should be included in the scheme and also to the imposition of the burden of the expense of the scheme on tithe-payers. It claims that the charge created under the Extraordinary Tithe Redemption Act, 1886, should be included in any provision for remission of the amounts payable; and, where large amounts of arrears of tithe rent-charge might be recovered concurrently with the recovery of the redemption annuities, the association calls for some special provision for the reduction and liquidation of those arrears which should, it is urged, in many cases either be cancelled entirely or settled by the State. The foregoing short indication of objections on the part of tithe-owners and tithe-payers shows the difficulties attendant upon the formulation of a scheme and, perhaps, the impossibility of satisfying the claims of the two sides principally concerned in a dispute which, it will be generally conceded, should, in the interests of both, be brought to a reasonable conclusion.

Women and Unemployment Insurance.

IN the course of a deputation of women members of Parliament and representatives of a number of women's organisations which recently waited upon the Minister of Labour, it was suggested that the Government should recede from the decision to accept the majority recommendation of the Unemployment Insurance Statutory Committee in favour of a uniform reduction of one penny a week in the contributions of all persons aged eighteen and over, and of their employers, and that, instead, they should accept the minority recommendations of Mrs. STOCKS, that the reduction of contributions should only apply to male contributors, and that the remainder of the surplus in the Unemployment Fund should be used to equalise the benefit rates of men and women. In reply the Minister said (we quote from *The Times*) that the Government had made their decision after careful consideration and he could hold out no hopes of that decision being altered. The proposal to equalise employment benefit rates for men and

women could not be considered without taking into account the reactions on the wage system and the other social services. The Married Women's Anomalies Regulations had been amended in 1933, as the result of a special inquiry, and he did not think that the time was yet opportune for another. In regard to another suggestion of the deputation that an inquiry should be held into the whole question of the position of women in relation to the various social insurance services—it being contended that women draw out under the unemployment insurance scheme substantially less in relation to contributions paid than do men contributors—Mr. BROWN said that the Statutory Committee in their report had suggested an inquiry into the relation between wages, benefit, unemployment assistance, and other forms of assistance, and he undertook to bear in mind the views of the deputation in considering this matter.

Local Government Officers.

SHORT reference may be made to the principal contents of a circular (No. 1525) which has just been issued by the Ministry of Health to local authorities, and is concerned with the various recommendations regarding the qualifications, recruitment, training and promotion of local government officers made in 1934 in the report of the Departmental Committee of which Sir HENRY HADOW was chairman. The circular intimates that it is not, for the moment, proposed to proceed further with the project of setting up a Central Advisory Committee representative of the associations of local authorities. This, it may be remembered, was described by the Departmental Committee as the chief of its recommendations, but it appears that there is some lack of agreement on the matter on the part of the associations concerned. Among recommendations stated by the circular to have been already widely accepted are those dealing with wide notification of vacancies, the selection of candidates by a committee of the local authority and not by an officer, the disqualification of candidates for canvassing or for failure to disclose relationship with a member or an officer of the council, and the allocation of all questions affecting the recruitment, qualification, training and promotion of officers to a central committee of every local authority. Other recommendations which have received a large measure of support are those relating to the supervision of appointments and salaries through a committee of the local authority and not merely by its officers, the need of administrative ability in principal officers and the appointment of responsible administrative assistants to these officers, the adoption of schemes of grading and salary scales, and universal schemes of superannuation. The foregoing are selected as among the more important of the considerable number of the committee's recommendations which have commanded a substantial measure of support.

Ribbon Development: Transport Ministry's Circular.

THE circular just issued by the Ministry of Transport concerning the standard width of roads under the Restriction of Ribbon Development Act, 1935, should be of real assistance to local authorities in the discharge of their obligations under that statute. The lay-out of roads in relation to the standard widths prescribed by the First Schedule to the Act has been considered by an *ad hoc* committee appointed by the Minister of Transport and consisting of members of the Experimental Work on Highways (Technical) Committee and representatives of the County Surveyors Society and of the Institute of Municipal and County Engineers, and the Minister's conclusions have been reached after careful consideration of the committee's recommendations. These conclusions cannot be set out in detail here, but the following points may be shortly noted:—10 feet is prescribed as the appropriate width for each lane of traffic, to be increased to 11 feet where a large proportion of industrial vehicles of maximum dimensions are likely to run over the road. Dual carriageways are thought desirable where a road is expected to carry 400 vehicles at the peak hour. The widths adopted should provide for such future widening of the carriageways, together with cycle tracks and footpaths as may become necessary. Ample central reservations, margins and verges are advocated to this end, and the provision of separate cycle tracks, sometimes on grounds of safety alone, sometimes on grounds of economy (as where their provision will obviate the necessity for widening an existing carriageway) are favoured. The following directions are given, in substance, for determining the appropriate standard width required for a proposed lay-out. For a single carriageway not exceeding 30 feet with footpaths the minimum standard width prescribed is 60 feet; for the same, with cycle tracks, 80 feet. If dual carriageways, each of two traffic lanes, are substituted for the single carriageway in the foregoing examples, 80 feet and 100 feet are prescribed respectively. Where each of the dual carriageways exceeds two traffic lanes, the widths should be 100 feet and 120 feet respectively. A width of 140 feet is prescribed where further provision is required for wider cycle tracks, additional width of verges for improved visibility or equestrian traffic, greater space for services or "improved amenities." Increases by one or more units of 20 feet are advocated for embankments or cuttings.

Access.

IT is recognised that applications for consent to new means of access will give rise to different considerations and may prove more difficult to deal with, especially in the case of land adjacent to a classified road which was sold as a frontage strip before 2nd August, 1935, the date when the Restriction of Ribbon Development Act came into operation. Mr. HORE-BELISHA trusts, however, that in the interests of public safety every endeavour will be made, by the construction of service roads or otherwise, to limit the number and prescribe the sites of new means of access to the road. It is recommended, moreover, that where service roads are to be constructed parallel to the traffic road they should, where practicable, be sited on land outside the standard width so as not to interfere with the development of the road for general traffic purposes. Mention is made of the importance for a highway authority desiring to prevent ribbon development on any road existing before the restrictions came into force of taking all possible steps of discouraging the sale of frontage strips or building plots along the road. The highway authority may, it is intimated, agree with the town planning authority, or, if there is no planning scheme in operation or in course of preparation, itself determine the number and position of the new street entrances to be permitted. Given a reasonable number of such entrances, it is suggested that landowners will be encouraged to think of development based on the new streets rather than of ribbon development along the traffic roads. The circular intimated that it is desirable that the highway authority's policy in this matter should be made known as soon as possible to landowners and others concerned.

Rural Water Supply: Allocation of Grant.

THE Ministry of Health intimates that it has provisionally allocated more than £900,000 of £1,000,000 set aside from the Exchequer to assist local authorities in the provision or improvement of water supplies in rural localities under the Rural Water Supplies Act, 1934. A circular (No. 1537) has just been issued from the Ministry to county councils and rural district councils in which it is stated that 25th April next has been fixed as the time limit for applications for a grant. This is necessitated by the amount already provisionally allocated and by the fact that applications are still coming in. It is therefore stated that the Minister of Health cannot undertake to entertain any application for grant which is not made in due form or accompanied by definite outline proposals on or before that day. The amount already allocated is, it may be of interest to note, towards the cost of rural water schemes, of an estimated total cost of over £5,500,000.

Totalisators and the Gaming Acts.

THE question whether contracts made with the owners or agents of a totalisator, in respect of moneys placed on the "Tote," are contracts within the Gaming Acts or not, has been exercising the attention of the courts—chiefly the county courts—for some time, and a few words on the subject may not be out of place.

The type of contract with which we are dealing comes into being in the following circumstances: A firm, or a limited company, either themselves operate, or act as agents for the operators of, a totalisator. These firms receive, from clients, sums of money which they put on the totalisator. As is well known, a fixed percentage of the money staked through the totalisator is retained by the operators and their agents, and the rest is divided up amongst the successful "investors." The firm opens credit transactions with private individuals and the question of the legitimacy or otherwise of the contracts arises when a private individual has been unlucky and finds that his account shows a balance on the wrong side. When pressed for this balance he pleads the Gaming Acts.

Section 18 of the Gaming Act, 1845, enacts that all contracts or agreements, whether by parole or in writing, by way of gaming or wagering shall be null and void, and that no suit shall be brought or maintained in any court of law for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made.

Section 1 of the Gaming Act, 1892, provides that any contract to pay any person any sum of money paid by him under or in respect of any contract rendered null or void by the Gaming Act of 1845, or to pay any sum by way of commission, fees, reward or otherwise, in respect of any such contract, shall be null and void and the amount irrecoverable.

It will thus be seen that the contracts which are null and void are (*a*) gaming contracts, and (*b*) wagering contracts. If a contract in connection with a totalisator is either a gaming contract or a wagering contract, obviously then the contract is unenforceable. It is first necessary, therefore, to consider the meaning of the expressions "gaming contract," "wagering contract" and "betting by means of a totalisator," and then to see whether a contract affecting a totalisator comes within either of the first two.

Gaming means playing a game for stakes hazarded by the players. A contract by way of gaming is one resulting from the mutual promises which the players necessarily make (expressly or by implication) in playing for stakes as to the transfer of such stakes upon the result of a game (see *Ellesmere* v. *Wallace* [1929] 2 Ch., pp. 37 and 38). It is settled that gaming includes playing games of skill as well as games of chance, and that horse-racing is a game within the meaning of the Gaming Acts (*Applegarth* v. *Colley*, 10 Mee & W. 723). It is to be noticed that a gaming contract must be between the players themselves. A contract between parties, who are not themselves taking part in the game, cannot, therefore, be a gaming contract, although it may be a wager.

A wagering contract has been described as an agreement between two persons, or classes of persons, whereby one (the loser) must be bound to pay money, or money's worth, to the other (the winner) if an uncertain event happens. Similarly, the other (the loser) must be bound to pay money, or money's worth, to the other (the winner) if the event does not happen. There cannot be more than two parties or sides to a wager, since the essence of such a contract is that one party must win and the other must lose.

A totalisator has been described as an apparatus for recording and indicating the amounts staked by persons using it upon the result of a sporting event, the total amount staked forming a pool which, after deduction of a percentage, is divided amongst those who have successfully forecast the result of the event ("Halsbury's Laws of England" (Hailsham edition), vol. 15, p. 470). In *Attorney-General* v. *Luncheon and Sports Club Ltd.* [1929] A.C. 400, it was laid down that the owners of a totalisator did not bet with the parties staking money by means of it. Lord Blanesburgh, in his judgment in this case, expressed the view that there was no betting either between the owners of the totalisator and the "investors" or between the investors *inter se*, and he described each pool as something in the nature of a highly developed sweepstake.

From the above, it seems clear that contracts affecting a totalisator obviously are not gaming contracts unless the parties to them are themselves playing the game on the result of which the stakes are made; and they are not wagering contracts because there are not two parties to the contract, but several. Therefore, not being either contracts by way of gaming or contracts by way of wagering, they are not within the Gaming Acts, and if a defaulting "investor" pleads, with that air of nonchalance which defaulting "investors" generally adopt on such occasions, the Gaming Acts, he is likely to be disappointed. The question has not yet come before the High Court for decision, but has been before the county court on more than one occasion. In *Pari Mutuel* v. *Sparks*, heard at the Warminster County Court, and referred to in 79 SOL. J. 9, His Honour Judge Gwynne James held that there was no betting transaction between the plaintiffs and the defendant, that the bets were among the members themselves, and His Honour Judge Longson in the Bakewell County Court, on the 4th February last, in *Tote Investors Ltd.* v. *Bell*, gave judgment to the same effect (see the "County Court Letter," 80 SOL. J. 239).

Company Law and Practice.

Winding-up subject to the Supervision of the Court.—I.

SECTION 256 of the Companies Act, 1929, provides that "where a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just." Comparatively few such orders are made nowadays, and it is hardly to be anticipated that the number will increase; but the subject is not without interest and is worthy of some consideration if only because of its unfamiliarity. Speaking generally, such a form of winding up approximates more closely in its practical effect to an ordinary voluntary winding up than to a winding up by the court. The most important differences, perhaps, between a winding up under supervision and a voluntary winding up are these: first, that the supervision order prevents actions being proceeded with or commenced against the company without leave of the court, and avoids any disposition of the property of the company made after the commencement of the winding up, and any attachment, distress or execution put in force against the company's property after that time; secondly, that the order usually provides for the taxation of costs; and, thirdly, that the court has power at the time of or subsequently to making the order, to appoint an additional liquidator. So that where there is a voluntary winding up, it may be of advantage to obtain a supervision order if a number of actions against the company are being threatened, or if the existing liquidator is not satisfactory. Apart from such cases, however, the few supervision orders that are made to-day are not infrequently the result of a compromise where a creditor is petitioning for a compulsory winding up and a resolution for a voluntary liquidation has been passed.

It will be noted that the section provides for liberty to creditors to apply to the court. Before the Companies Act,

1900, the court had no jurisdiction to hear an application by a creditor in a voluntary winding up, and, consequently, the right of a creditor to apply to the court in a winding up under supervision was, from the point of view of creditors, one of the main advantages of a supervision order and was often the motivating factor in a petition for such an order. Section 25 of the 1900 Act, however, gave creditors the right to apply to the court in every voluntary winding up (see now s. 252 of the 1929 Act), and so one of the chief objects of obtaining a supervision order disappeared; and, indeed, such importance was attributed to this that in 1901 Wright, J., expressed the view that since the coming into operation of s. 25 of the 1900 Act, there no longer remained any real advantage in having a supervision order and indicated that he would not be disposed to allow the costs of a petition unless there was some sufficient reason for making the order. As we have seen, however, there may still be circumstances in which such an order may be of real advantage and the court to-day will make the order in a proper case.

No hard and fast rules can be laid down as to the cases in which the court will make a supervision order. The section leaves the matter entirely to the discretion of the court. This was pointed out by Turner, L.J., in *In re Bank of Gibraltar and Malta*, L.R. 1 Ch. App. 69, at pp. 72-3: "The Act . . . gives full power to the Court to make such an order but it seems to me to leave it absolutely and entirely in the discretion of the Court whether the order shall be made or not. Neither in the section . . . nor in any other part of the Act . . . has the legislature in any way defined the circumstances by which the court is to be guided in the exercise of this discretion. I think, therefore, that in determining the question whether such an order should be made or not, we must look to the facts on which the application for the order is grounded and consider whether those facts present a case rendering it proper that the order should be made with a view to putting in force some of the provisions of the Act, which would be available if the order were made, but would not be available under a mere voluntary winding up." One of the considerations, therefore, which will influence the court in exercising its discretion as to whether an order for winding up under supervision should or should not be made is the advantage in the particular case of having available those provisions of the Act which are applicable to a winding up subject to supervision but not to a voluntary winding up. Further, the court, by virtue of s. 288 of the 1929 Act, may have regard to the wishes of the creditors or contributories, and this, as was pointed out in some of the earlier cases, appears to be the only provision in the Act itself which assists the court in exercising its discretion as to whether the winding up shall be made subject to supervision or not. And, again, there is the consideration of expense. The way in which the court will take into account these various considerations is well illustrated by a passage from the judgment of Rolt, L.J., in *In re Beaujolais Wine Company*, L.R. 3 Ch. App. 15. "Here the majority, including the creditors, as far as appears, say 'let us have our own affairs in our own hands; we have confidence in one another, and in the persons we have appointed liquidators, and we wish to avoid the expense of being wound up under the supervision of the court.' It is objected, on the other hand, that in a voluntary winding up the liquidators are practically under no control at all. . . . You have had here the expense of a petition to get the order for coming under supervision; . . . all that, if you had followed the provisions of the Act, would have been saved. When you come to a question of wrongful doing by those who have the voluntary winding up you have ample protection, not by presenting a petition, but by coming to the court. . . . There is a balance of convenience and inconvenience. I have, on the one hand, the convenience of allowing the opinion of the large majority of the contributories and creditors as to the mode of winding up to prevail over the disapprobation of one of the body; and on the other, I have the inconvenience of the expense, which may be utterly unnecessary, of coming to this court and obtaining and working under the supervision of the court, when the wrong, if there be any wrong by mismanagement, can be cured by applying to the court." See, too, *In re Bank of Gibraltar and Malta*, 1 Ch. App. 69, at p. 73.

Instances of cases in which the court has exercised its discretion in accordance with the wishes of the creditors, or a majority of them, are to be found in the reports. In *In re Electric and Magnetic Company*, 44 L.T. 604, the company presented a petition for a supervision order. The majority of creditors opposed this and the court refused to make a supervision order against the wishes of the creditors. At the same time, a compulsory order on the petition, asking for an order for winding up subject to supervision, was refused in the absence of the company's consent. Again, in *In re Owen's Patent Wheel Tire and Cable Company Limited*, 29 L.T. 672, where some creditors petitioned for a compulsory order and others for a winding up subject to supervision, Hall, V.-C., made a supervision order in accordance with the wishes of the majority of creditors. And where, on a creditor's petition for a supervision order, the shareholders opposed but put forward no scheme for providing means for the company, the order was made: *Re Prince of Wales Slate Quarry Company Limited*, 18 L.T. 77.

Generally speaking, it seems that the court will not make a supervision order on the petition of a contributory except where there has been fraud or undue influence brought to bear in procuring the resolution for voluntary liquidation. In *In re London and Mercantile Discount Company*, 1 Eq. 277, Page Wood, V.-C., said this: "The court can hardly be too careful in adhering to the course which seems to have been thought desirable by the legislature when it gave power to companies to wind up voluntarily. The legislature had thought that the shareholders should meet and regulate that part of their own business as they would regulate any other part of it by the views of the majority; and provided the votes of the majority are given fairly and reasonably, there is no ground whatever for the interference of the court. At the same time, no doubt, it was foreseen that there might arise cases of such decided undue influence, and such a course of overbearing authority by those whose acts were sought to be impeached as would render it desirable that the court should interfere; and therefore, in such cases, there was reserved to the court the power of superintending a voluntary winding up by putting in force its coercive jurisdiction, where anything improper should be attempted on the part of those who might endeavour to screen their own actions by procuring a voluntary winding up." See, too, *Re The United Merthyr Collieries Company Limited*, 16 L.T. 170. For cases where on the petition of a contributory alleging breaches of trust and misconduct on the part of the officers of the company, a supervision order has been refused on the ground that the majority voting for the voluntary liquidation was an honest majority and no case of fraud or undue influence had been made out, see *In re London and Mercantile Discount Company*, 1 Eq. 277; *In re Bank of Gibraltar and Malta*, L.R. 1 Ch. App. 69; and *In re Beaujolais Wine Company*, L.R. 3 Ch. App. 15. It would seem also that the misconduct of a liquidator in a voluntary winding up is not of itself sufficient to entitle a contributory to a supervision order: he has his remedy in that proceedings can be taken against the liquidator.

Cases where the court in the exercise of its discretion has refused to make an order for winding up subject to supervision must, of course, be distinguished from those where the court cannot make the order because the resolutions for voluntary liquidation were for some reason not properly passed. Section 256 only comes into operation when a company has passed a resolution for voluntary winding up, and, consequently, if that resolution was not effective, the court has no jurisdiction to make a supervision order. See *In re Sheffield*

Mortgage and Estates Company [1887] W.N. 218; *Re The Caloric Engine & Siren Fog Signals Company Limited*, 52 L.T. 846.

It may be noted that if a petition for a compulsory order has been brought and at the hearing the petitioner asks only for a supervision order, the court will order the petition to be re-advertised: for "persons who would be satisfied with a compulsory order would not take the trouble to appear if they thought such an order would be made, but might appear to object to a supervision order." See [1902] W.N. 77; *In re New Oriental Bank Corporation* [1892] 3 Ch. 563. And, on a petition for a supervision order, the court will not, it seems, make a compulsory order if the petitioner will not consent. See *Electric and Magnetic Company, supra*.

Next week I hope to conclude this topic by considering the effect of a supervision order, so far, that is to say, as it differs from a voluntary and a compulsory winding up.

Landlord and Tenant Notebook.

Suspension of Rent on Eviction.

THE expression "eviction" has a somewhat mediæval flavour about it: the forcible resumption of possession by a landlord is an unheard of occurrence nowadays, and its legal aspect not worth discussing, save in academic spheres. But the term now covers more than expulsion by brute force. The extension of meaning was remarked upon by Jervis, C.J., in his judgment in *Upton* v. *Townend* (1855), 17 C.B. 30. "It is extremely difficult at the present day to define with technical accuracy what is an eviction. Latterly, the word has been used to denote that which formerly it was not intended to express. The word . . . was formerly used to denote an expulsion by the assertion of a title paramount, or by process of law. But that sort of eviction is not necessary to constitute a suspension of the rent, because it is now well settled that if the tenant loses the benefit of the enjoyment of any portion of the demised premises, by the act of the landlord, the rent is thereby suspended." His lordship went on to emphasise that the landlord's act must be "not a mere trespass and nothing more, but something of a grave and permanent character done by the landlord with the intention of depriving the tenant of the enjoyment of the demised premises."

The report of *Upton* v. *Townend* takes up forty-five pages, three of them occupied by elaborate plans; but it is sufficient for present purposes to state that the action was for rent of warehouse premises in the City of London which had been burnt down and then rebuilt to the satisfaction of the ground landlords, a respectable livery company, but in such manner that one of the tenants got less accommodation and the other "altogether different" accommodation from what he had formerly had. In these circumstances the defences succeeded, the defendants having "lost the enjoyment . . . by the act of the landlord," which was "not a mere trespass and nothing more, but something of a grave and permanent nature"; but, apparently, by "intention of depriving," the learned chief justice meant "having as its natural and probable consequence the effect of depriving" the tenant of his enjoyment of the demised premises. At all events, the authorities as a whole do not suggest that a landlord who, say, innocently encroached upon his tenant's premises, would not be guilty of eviction; but intention has undoubtedly played a part.

Trespass, it is true, cannot be committed unintentionally; and in *Henderson* v. *Mears* (1859), 28 L.J., Q.B. 305, the real issue in the case was whether the plaintiff landlord had committed trespass (to the person) against a third party, or eviction of the defendant, or both. The claim was for a quarter's rent of apartments let by the year, and it appeared that when entering into possession the defendant had brought a shabbily dressed individual with him, who had misconducted himself, and also posted bills in the window announcing that the apartments were to be let; the tenant left, and the plaintiff put out the third party and removed the bills. At the trial, the direction to the jury was whether the trespass to this individual was committed just for the purpose of expelling him, or was it for the purpose of depriving the defendant of possession. The jury having found for the plaintiff, the defendant moved for a new trial; his counsel's argument was interrupted by pertinent but awkward questions from the bench. Lord Campbell asked whether the plaintiff had ever denied the defendant's title; Wightman, J., whether the tenant could not have returned next day. While negativing misdirection, these remarks suggest that effect is more important than intention.

In *Burn* v. *Phelps* (1815), 1 Starkie 94, a "Notice to quit" by a superior landlord to under-tenants, which had been acted on, was held to constitute an eviction; and the mesne tenant was able to set off a year's rent of premises sub-let, of which he had been unable to dispose. What the plaintiff had meant to effect was not considered.

These cases really emphasise the fact that the act complained of must be sufficiently serious to deprive the tenant of possession and keep him so deprived. The oldest reported authority on eviction is, I think, *Salmon* v. *Smith* (1669), 1 Wm. Saunders 202; the plea recorded was that the plaintiff landlord "expelled and removed . . . and *kept out* . . . from his possession thereof always from thence."

Nowadays, the problem of eviction probably most frequently presents itself when demised premises are abandoned by insolvent or discontented tenants. In the absence of any conduct which can be construed as an offer to surrender, the landlord must tread warily. If he wishes to preserve his rights against and incur no liability towards the tenant, regard must be had to the law of eviction. *Wheeler* v. *Stevenson* (1860), 6 H. & N. 155, illustrates how things can be done. One issue in that case was whether the plaintiff had not evicted the tenant from two of four houses comprised in the premises demised, which had been deserted and abandoned. Soon after that event a police officer had, at the landlord's instigation, taken possession and stayed for a time; the constable then handed over to a private person, who ultimately (when forfeiture proceedings under C.L.P.A., 1862, had been completed) became the new tenant. Possession had, in fact, been given to him "on the verbal understanding" that he should have a lease. It was held that this taking of possession was not an eviction in view of the desirability of protecting the property from nuisance, etc. But—unless the forfeiture had already occurred—I do not see that the landlord would technically have had any answer to a claim for trespass or for breach of covenant for quiet enjoyment. Fundamentally, eviction is breach of covenant for quiet enjoyment and derogation from grant carried to their extreme limits, so that no enjoyment is left and the grant is derogated away altogether.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Tote Investors, Ltd. v. *Bell.*

Sir,—The attention of our clients, Tote Investors, Ltd., has been called to the report of this case, which appears on p. 239 of your issue of the 28th ultimo, where it is stated that the plaintiffs had invested the amount claimed in their totalisator at race meetings and greyhound race meetings. Our clients desire us to point out that they do not do any business in connection with greyhound race meetings.

SIMMONS & SIMMONS.

Threadneedle Street, E.C.2.
6th April.

Our County Court Letter.

THE OWNERSHIP OF BURNT CLOVER STACKS.

In the recent case of *Wright* v. *W. H. North & Son*, at Spalding County Court, the claim was for £77 10s. as the price of goods sold, and the counterclaim was for £80 as damages for failure to deliver. The plaintiff had cropped and stacked 30 acres of clover, which were bought by the defendants, who were subsequently informed that over-heating was suspected. No precautions were taken, and the stack, before delivery, was destroyed by fire. The plaintiff had a general policy (not insuring the stack specifically) and the insurance money was paid to him. The amount was inadequate, and the plaintiff contended that the stack was not his, as the property had passed. This was denied by the defendants, whose case was that the stack was not in a deliverable state until it had been pressed and put on rail. His Honour Judge Langman held that the property passed at the time the contract was made, and that the goods were in a deliverable state. Judgment was given for the plaintiff on the claim and counterclaim (subject to a deduction of £4 6s. for cartage) with costs.

ESTATE AGENTS' LIABILITY FOR RATES.

In a recent case at Cardiff County Court (*Love* v. *Deere, Son and Grizelle*) the claim was for £11 11s. 9d. as the amount of rates paid by the plaintiff in respect of his house. The tenancy began in May, 1934, at a rent of £1 2s. a week, including rates. The plaintiff contended that the defendants as agents for the landlords (the Celtic Property Company) had undertaken to pay the rates. The demand notes were handed to the rent collector, but—owing to non-payment—the plaintiff was summoned, and had been ordered to pay the rates. The defence was a denial of any personal undertaking to pay the rates. His Honour Judge Thomas held that the defendants were acting as agents, and were not liable to the plaintiff, unless he could show that there had been a personal undertaking by the defendants. There was no evidence of this, and judgment was given for the defendants, with costs.

LANDLORD AND TENANT ACT, 1927.

In the recent case of *Stone* v. *Bellringer*, at Bristol County Court, the claim was for compensation for loss of goodwill. The plaintiff had been a weekly tenant of a lock-up shop, at a rent of 8s. 6d. a week, for eight years. During that time he had carried on business as a boot and shoe repairer, making a profit of £4 a week. On the 16th September, 1935, he received a week's notice, and had since worked in an outhouse, three-quarters of a mile away, and his profit had declined to £2 a week. No opportunity of paying a higher rent was given, and the shop had since been occupied by the defendant's son. The latter was also a boot repairer, and was enjoying the fruits of the plaintiff's efforts. Expert evidence was given that the capital value of the goodwill, attached to the lock-up shop, and the worth to an incoming boot repairer of that portion of the goodwill remaining, was £156. The defence was that the question was not what the plaintiff had lost, but what benefit had accrued to the defendant. The plaintiff had paid nothing for goodwill, on taking the shop, and any goodwill had followed him to his new place. No benefit had been received from the goodwill, as no rent was paid by the defendant's son, whose takings only averaged 30s. to £2 a week. An offer from the plaintiff of 15s. a week for the premises would not be acceptable unless provision was made for the defendant's son. Expert evidence was given that the shop had no convenience, and was unlettable. Customers would resort to the workman, not the premises, and the short distance to which the plaintiff had moved should enable him to keep his trade. His Honour Judge Parsons, K.C., gave judgment for the plaintiff for £27 and costs. It is to be noted that the proceedings (to save expense) were brought direct to the court, instead of before a referee.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

FATAL ACCIDENT TO SHIP'S STEWARD.

In *Boanas* v. *Barr Shipping Co. Ltd.*, at Barry County Court, the applicant's case was that her deceased husband had been a steward in the s.s. "Barrwhin," which was in the Indian Ocean on the 15th February, 1935, on a voyage from Cardiff to Ceylon. At 7 p.m. the deceased went to the ship's side, apparently to vomit, and he appeared to overbalance and fall overboard. The respondents denied that the accident arose out of the employment of the deceased, who, at 5 p.m., was definitely more or less intoxicated—as shown by a deposition of the captain, read in court. His Honour Judge Thomas was satisfied that the condition of the steward, as stated by the captain, was the primary cause of the accident. Judgment was therefore given for the respondents, with costs. Compare *Frith* v. *Owners of s.s.* "*Louisianian*" [1912] 2 K.B. 155. This decision has since been upheld by the Court of Appeal.

FARM WORKER'S EYE INJURY.

In *Ball* v. *Phillips*, at Newport (Mon.) County Court, the applicant was a hedger, and had been hit by a falling branch in his right eye, the sight of which was destroyed. Liability was denied, on the ground that the applicant was a smallholder, and had been engaged to carry out the hedging at a fixed price. He was therefore an independent contractor, and not a workman within the Acts. The applicant's case was that, if the work had not been done properly, he would not have been sued for breach of contract, but would have been dismissed, i.e., as a servant. His Honour Judge Thomas held that the applicant was a general farm labourer, and had been continuously employed over a period of years. An award was made of 22s. 6d. in respect of total incapacity from the 6th February to the 6th May, 1935, and 16s. 10½d. thereafter for partial incapacity, with costs on Scale B.

NERVOUS HYSTERIA NOT AN ACCIDENT.

In *Redpath Brown & Co. Ltd* v. *Causer*, at Birmingham County Court, the application was for a review and termination of an agreement. The respondent was a steel erector, and, while working on a girder, he had been hit on the head by a bolt, which was accidentally dropped from above. From June, 1934, he was paid 30s. a week compensation, until January, 1935, when he returned to work. He was unable to continue, however, and was afterwards paid 17s. a week. The medical evidence was that, although the eyelids were flaccid, there were no spasms. These were always present in hysterial cases, and the inference was that the condition was simulated. The respondent's medical evidence was that the drooping of the eyelids was genuine, and his case was that his value in the labour market was nil. His Honour Judge Dyer, K.C., held that the condition was not attributable to the accident, and judgment was therefore given for the applicants.

ADDED PERIL ON RAILWAY.

In *Leaf* v. *Hatfield Main Colliery Co. Ltd.*, at Thorne County Court, the applicant was aged eighteen, and was employed on the screen washery. On the 17th July, 1935, he ceased work at 9 p.m., by the foreman's permission, as his usual time of finishing was 10 p.m. In order to reach the pit baths, it was necessary to cross some railway lines, where shunting was in progress. The shunter had uncoupled two trucks, and given the engine driver the signal to move forward, when the applicant and two other boys arrived. Instead of waiting for a lane between the trucks, or going round the train, the three boys went underneath the trucks. Two got through, but the applicant was caught by a moving truck, and sustained serious and permanent disablement. Liability was denied, on the ground that the applicant's action was outside his employment. His Honour Judge Sir Reginald Mitchell Banks, K.C., gave judgment for the respondents, with costs. See *Lancashire and Yorkshire Railway* v. *Highley* [1917] A.C. 352.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Mortgage—Power of Sale—Sufficiency of Notice under L.P.A., 1925, s. 103 (1).

Q. 3287. Our clients entered into a mortgage which fixed the redemption rate six months after the execution, i.e., the 25th December, 1935. The mortgagee has now served a notice requiring repayment on 26th December, 1935. Section 103 (1) of the L.P.A. provides for the exercise of the powers of sale *if default* has been made *for three months* after the service of the notice. Since the mortgagor cannot make default until after the redemption date, is the notice which has been served in order? We can find no authority other than the section itself.

A. We express the opinion that the notice (and it will be appreciated that we give this opinion without having seen the actual text of the notice) is good to enable a sale to be made at the end of March, 1936. The power of sale arises so soon as the debt is due, that is to say, on 25th December, 1935 (L.P.A., 1925, s. 101 (1)), but cannot be exercised unless and until notice requiring payment has been served " and there has been default in payment of the mortgage money, or of part thereof, for three months after such service " (*ibid.*, s. 103 (1)). There does not appear to be any suggestion that the debt must be due when the notice is served or that the default must commence to run immediately upon the service. The mortgagor would get his three months to pay or be sold up. We have been unable to trace any authority upon this very interesting point.

Mortgage with Guarantor—Payment by Guarantor—Transfer by receipt endorsed to Guarantor—L.P.A., 1925, s. 116—Mercantile Law Amendment Act, 1856, s. 5—Title.

Q. 3288. A freehold farm was conveyed to AB in fee simple by a conveyance dated the 23rd October, 1917. By a mortgage dated 1st November, 1917, AB mortgaged this farm to CD. Two sureties, EF and GH, were parties to this mortgage. The mortgage recited that AB and EF and GH had requested CD to lend to AB the sum to be advanced and AB, EF and GH jointly and severally covenanted with CD to repay the sum so lent to AB with interest thereon. The mortgage contained the usual proviso for redemption that on payment of principal and interest " according to the foregoing covenant " the mortgaged premises should at the request and cost of AB his heirs or assigns be reconveyed to him or them. According to an abstract furnished to us this mortgage is endorsed with a receipt in the following terms :—

> 30th July 1932. By Transfer of Mortgage of this Date the within named CD thereby acknowledged to have received that day the sum of £X which represented the principal money secured by the within written Mortgage together with interest and costs the payment having been made by the within named GH being a person not entitled to the immediate equity of redemption in the Mortgaged property whereof that receipt related And it was expressly provided that the receipt should operate as a Transfer to him of the benefit of the said Mortgage.
>
> Executed by CD and attested.

We are acting for a purchaser of the farm from GH who is purporting to sell as mortgagee. The question that arises is whether or not having regard to s. 116 of the L.P.A, 1925, GH can make a good title as Mortgagee. It is suggested that as GH, under the mortgage of 1st November, 1917, was jointly liable for the principal and interest the payment by him to CD on the 30th July, 1932, of the principal and interest may have been " a discharge " of the money secured by the mortgage within the meaning of s. 116 of the said Act and that consequently the mortgage term became a satisfied term and ceased. If this suggestion is correct then on payment by him of the sums owing under the mortgage GH could not keep the mortgage alive and obtain the benefit of it either by a statutory receipt or an ordinary transfer and it is suggested that what ought to have been done was that GH should have lent AB the amount required to pay off the mortgage and then the mortgagee should have been discharged by a statutory receipt (the mortgage money being expressed to be paid by AB) and then AB should have executed a new mortgage in favour of GH. There appears, therefore, to be considerable doubt if GH can make a title to the farm as Mortgagee under the mortgage of 1st November, 1917, and the receipt (called a transfer of mortgage) endorsed thereon. Subsections (2) and (3) of s. 115 of the said Act have not been overlooked but for the reasons stated above it is difficult to reconcile these subsections with s. 116.

A. We express the opinion that title may safely be accepted from GH as mortgagee in view of s. 5 of the Mercantile Law Amendment Act, 1856. This section provides that " Every person who, being surety for the debt . . . of another . . . shall pay such debt . . . shall be entitled to have assigned to him . . . every . . . security which shall be held by the creditor in respect of such debt . . . whether such . . . security shall or shall not be deemed at law to have been satisfied by the payment of the debt . . . and such person shall be entitled to stand in the place of the creditor and to use all the remedies . . . of the creditor . . . etc., etc.

Title to Furniture.

Q. 3289. A purchased some articles of furniture in 1908 in the name of his daughter, B, who was an infant. A hire-purchase agreement was entered into, B signing as purchaser and A as surety. The subsequent receipts for the instalments were made out in the name of B, although they were paid with A's money. B resided with her father until marriage in 1922, and on leaving did not take her furniture with her. Some time after 1922, A went to reside with his son, X, and took the articles of furniture with him. It was always understood between A and B that the furniture was B's and that she could remove it at any time. A died in 1934 intestate and no grant of administration has been taken out. B has now requested her brother, X, to deliver up the furniture and he has refused. B has commenced proceedings for detinue and X has pleaded the Statute of Limitations (21 Jac. 1, c. 16). We are of the opinion that A held the goods on a simple bailment which was never determined, and B could have sued A any time within six years of A refusing to deliver them up. We do not know what may have transpired between A and X while A was residing with X, but we do not see how X can now plead the Statute of Limitations. We have referred to *Miller* v. *Dell* [1891] 1 Q.B. 468, which seems to confirm our view that B could have always sued A within six years of refusal to deliver up. We should be obliged for your opinion as to the position between B and X and the Statute of Limitations.

A. It is agreed that the Statute of Limitations did not begin to run against B until after refusal to deliver up. X cannot therefore plead the statute, and any purported gift by A to X was invalid. See *Plant* v. *Baker*, noted under the title "Administrator's Claim to Chattels" in the "County Court Letter" in 79 SOL. J. 246.

Wife's Costs of Separation Deed.

Q. 3290. If a wife intending to enter into a deed of mutual separation with her husband instructs a solicitor to approve the deed on her behalf and he does so, but terms are not agreed and the matter goes off, is the solicitor entitled to obtain his costs from the husband in pursuance of an agreement between him and the husband's solicitor that his (the wife's solicitor's) reasonable costs will be paid, no provisions having been made in the proposed deed for payment of any such costs and no stipulation having been made by the husband's solicitor that payment of the costs was conditional upon the matter being satisfactorily concluded? Alternatively, and apart from any arrangement as to payment of the wife's costs, is the husband liable on the wife's implied agency to pledge her husband's credit for the costs of the separation?

A. The wife's solicitor is entitled to obtain his costs from the husband, apart from the unconditional agreement that such costs should be paid. The costs are "necessaries," and the wife is entitled to pledge her husband's credit to the extent of consulting a solicitor, even in reference to a proposed separation. Both questions are, therefore, answered in the affirmative. See *Abraham* v. *Hoffe-Miles* (1923) 40 T.L.R. 2.

Director's Salary—Company Minutes.

Q. 3291. A is a director of a company, and in 1932 the following minute was passed: "Resolved, that the salary of A be £7 weekly, subject to review at the end of the Company's first financial year." In 1934 the question of directors' remuneration again arose, and the following minute was recorded: "Resolved, that for the period to the 31st of December next A's remuneration should be at the rate of not in excess of £10 per week." The latter resolution was passed on the 4th of July 1934 and from that date until the present date A drew remuneration, namely £2 per week. It was not intended that A's salary should ever be £10 per week, and he was quite satisfied to draw at the rate of £8 per week. It is desired to know whether A could be successful in his claim against the company. Reference case law would be appreciated.

A. The exact claim by A is not stated, but it appears that he is claiming the balance between what he has drawn and £10 per week. In other words, he is claiming the arrears of the amounts by which his salary was less than £10 per week. The resolution only operated until the 31st December, 1934, and it has apparently been continued by mutual consent. The resolution was vague and uncertain in its terms, and evidence will be admissible as to the way in which both parties construed it until recently. It will, therefore, be a matter of adverse comment in A's case that he accepted less than £10 a week for some time, and has only recently sought to establish a claim to the full amount by a strained interpretation of the resolution. The opinion is given that A would not be successful in his claim against the company, but there are no reported cases in point.

Inspection of Company's Minute Book.

Q. 3292. Under the provisions of s. 121 (1) of the Companies Act, 1929, I have (acting on behalf of my clients who are the administratrices of a deceased shareholder) made four applications to inspect the minutes of the annual general meetings of X Company, Ltd., but all have been refused either expressly or by implication. It is known the directors object to my seeing the minutes and would probably produce them to my clients, but they, being females, would not fully understand the purport of the inspection, nor probably bring away full details upon which I could advise them with safety. I am unable to find any authority as to the construction to be placed on the word "member" in the above section and shall be glad of your view as to whether the word is to be construed as "the person registered as a member" only, or whether it can be construed widely so as to include a member's solicitor or agent and thus giving me power to make an application to the court of summary jurisdiction founded upon the refusal of my applications.

A. The minute book is a private document, and the statutory right of inspection is restricted to members. If the point were ever contested, the court would probably construe s. 121 (1) strictly. Nevertheless, s. 121 (2) entitles a member to be supplied with a copy of the minutes, at a cost not exceeding 6d. per 100 words. Having obtained the copy, the member is further entitled to attend and check its accuracy, as there is no limit to the number of inspections under s. 121 (1). The questioner's clients should therefore apply for copies (offering to pay therefor) and should at the same time ask for an appointment to check same. They should also intimate that, to save the secretary the trouble of making the copies, the latter will not be required, if facilities for inspection of the minute book are given to the applicants' solicitor.

Liability for Defective Stair.

Q. 3293. In March, 1935, X took up a tenancy of the ground floor and first floor of a private house in London, at a rent of 32s. 6d. per week. He has lived there since that date with his wife, and also with his married daughter, Mrs. Y, her husband and children. Mr. and Mrs. X and Mr. and Mrs. Y and the three children live together on the two floors, but Mr. and Mrs. Y have a separate bedroom of their own. The Y family of course pay no rent to the landlord, but are merely part of Mr. X's family. Since Mr. X went into occupation the cement steps leading from the back garden up to the ground floor have been in a bad state of repair and were in fact dangerous, and during April and May Mr. X pointed out the danger to the owners' rent collector, but nothing was done. In June, 1935, a building society, to whom the landlord had mortgaged the house many years ago, gave notice to Mr. X that they had appointed a receiver of the property under the mortgage, and required Mr. X to pay his rent to the receiver, or his agents, which Mr. X proceeded to do. During the months of June and July Mr. X complained both to the building society itself, through their manager, and to the receiver's agent, who collected the rent, that the steps were broken and dangerous, and on one occasion he actually said to the society: "I suppose you will do nothing until an accident happens." In August, 1935, Mrs. Y was walking up the steps when her foot went through the step and she received injuries. Has Mrs. Y any, and if so, what claim against any person, and, if so, whom?

A. The receiver, although appointed by the building society, is doubtless constituted the agent of the mortgagor by the terms of the mortgage. Any action must therefore be against the landlord, who is liable under the principle of *Cunard* v. *Antifyre Limited* [1933] 1 K.B. 551. The plaintiffs will be Mr. X as tenant, in respect of the loss of use of the step, while out of repair; Mrs. Y, in respect of the negligence, causing her personal injuries; Mr. Y, in respect of the negligence, involving him in expense for his wife's medical expenses. The defendant may attempt to distinguish the above case, on the ground that Mr. and Mrs. Y were not in his reasonable contemplation as occupiers. This point, however, would apparently be untenable, as the landlord and the receiver's agent must all have been aware of the presence of Mr. and Mrs. Y. The repeated notifications of the defective step, and the omission to repair, are evidence of negligence by the landlord or his agent.

To-day and Yesterday.

LEGAL CALENDAR.

6 APRIL.—James Alan Park was born in Edinburgh on the 6th April, 1763, but in early childhood he came to England where he was brought up, practised law and became, if not a great judge, at any rate, a well-known one. His career Lord Chancellor Erskine summarised thus:

"James Alan Park
Came naked stark,
From Scotland.
But now he wears clo'es
And lives with beaux,
In England."

7 APRIL.—The Reverend Mr. Stevens was a romantic young parson who carried off a ward of Chancery to Gretna Green and married her without asking the Lord Chancellor's leave, and on the 7th April, 1790, found himself summoned before Lord Thurlow to answer for his contempt of Court. Though the mother, aunt and other relatives of the young lady bore honourable testimony to his character and declared that they approved of the marriage, though it was made without their privity, the Chancellor committed the offender to the Fleet Prison, observing that there could be no excuse for a clergyman of the Established Church, carrying a ward of Court to Scotland to be married by a blacksmith.

8 APRIL.—On the 8th April, 1833, twenty-four years after the body of Patrick Chasey, a drummer in the 19th Regiment of Foot, had been found drowned, three men were tried at Taunton Assizes on a charge of murdering him. Two of the men had lost money to the deceased at cards the night he disappeared, and the third was the landlord of the inn where he was last seen alive. The whole affair had been forgotten till one evening the landlord got drunk and what he said brought the three men to the dock. The evidence was pretty strong that they had conspired to rob him of his winnings and throw him into the river, but the jury felt a doubt, acquitted them and left an unsolved mystery.

9 APRIL.—Francis Bacon died in the cause of science. At the end of March, 1626, while taking an airing with Dr. Witherspoon, the King's physician, one snowy day, he bought a chicken from a poor woman at the bottom of Highgate Hill and left his coach to collect snow to stuff it, in order to observe the effect of cold on the preservation of its flesh. While doing so a chill seized him so suddenly and violently that he had to be carried to the Earl of Arundel's house nearby, but the bed he was placed in there was damp and he caught so severe a cold that he died on Easter Sunday, the 9th April. Think of Bacon next time you use a refrigerator.

10 APRIL.—Madame Rachel, the mid-Victorian precursor of the beauty specialist, did little honour to that now flourishing and respectable profession. She claimed by her bath preparations, spices, powders, perfumes and treatment to make her clients beautiful for ever. In return, she extorted from them large quantities of jewellery and a great deal of money. On the 10th April, 1878, she appeared at the Old Bailey, not for the first time, on a charge of false pretences. The prosecutrix was a lady who had pawned her jewellery to pay for certain washes from which she had contracted a rash. It appeared from the evidence that the prisoner had charged a guinea for what turned out to be a bottle of pearlash and water. She got five years' penal servitude.

11 APRIL.—On the 11th April, 1798, Colonel King was acquitted at Cork Assizes of the murder of Colonel Fitzgerald. The dead man, though married, had eloped with his sister, and when she had been taken away by her relations, he had been encouraged by a note from her to follow her in disguise to the family residence. Colonel King and his father, the Earl of Kingston, hearing of his presence, had forced their way into his room at the inn at Kilworth and, in the course of a struggle, the Earl had shot him dead. The peer was subsequently acquitted in the House of Lords.

12 APRIL.—On the 12th April, 1587, at three in the morning, Sir Thomas Bromley, Lord Chancellor, died at the age of fifty-seven.

THE WEEK'S PERSONALITY.

On the death of Lord Keeper Bacon, the problem of finding a successor was acute. For two months the Great Seal was in no lawyer's custody. Arrears began to pile up and Queen Elizabeth still hesitated to her choice. She would not have an ecclesiastic nor a politician. Gerrard, the Attorney-General, was learned, but awkward, and in the end, Bromley, the Solicitor-General, by dint of intrigue, succeeded in obtaining the appointment over the head of his senior. His ability was never in question and he had a high reputation at the Bar, "not admitting all causes, promiscuously, but never failing in any cause." Bacon has preserved one example of his ready wit. Having offered in evidence a deed which counsel on the other side impeached as fraudulent, arguing that it had not been produced in two former suits on the same title, some other conveyance being then relied upon, Catlin, J., who inclined to that opinion, said to him: "I pray then, Mr. Solicitor, let me ask you a familiar question. I have two geldings in my stable, and I have divers times business of importance, and still I send forth one of my geldings and not the other; would you not say I set him aside as a jade?" "No, my lord," replied Bromley, "I would think you spared him for your own saddle." In the Court of Chancery, he was a success and he is worthy of remembrance if only as the judge who laid down the rule in *Shelley's Case*.

TURKISH BATHS.

A recent case in Mr. Justice Hawke's Court involved a complicated and at times almost hilarious discussion of the nature of Turkish baths. The learned judge's admission that he had never been in one in his life recalls a very pleasant little tale out of that delightful miscellany "More from a Lawyer's Notebook." The author tells how for many years he used to meet Judge Bacon in the hottest room in a Turkish bath in the Harrow Road, where in an atmosphere of intense perspiration they would discuss the nature of litigation in Whitechapel and talk of the Judge's great father, Vice-Chancellor Bacon. One day in the street he met an old gentleman who stared hard at him, and then accused him indignantly of pretending not to know him. He confessed apologetically that he did *not* know him, and then the stranger announced himself as Judge Bacon. The author adds: "I had to excuse my ignorance by pointing out that I had never before seen him in his clothes, for I had never appeared in his court or seen him anywhere except in the nude."

ENTENTE CORDIALE.

The distinguished French barristers who were recently invited by Mr. Justice MacKinnon to take their seats in the "silks'" bench within the bar, while they were waiting to give evidence in a case before him, received proof of the firm goodwill that has long existed between English lawyers and their colleagues in France. This friendship burst forth in an extraordinary manner when the great Antoine Berryer, not only one of the most magnificent advocates that France has ever produced, but one of the outstanding figures in forensic history, was entertained to dinner in Middle Temple Hall, in 1864. His arrival in England took on an international importance and became almost a state visit. When Lord Brougham brought him into the Court of Queen's Bench at Westminster, Lord Chief Justice Cockburn and all the members of the Bar rose to receive him, and he was given a seat on the Bench. In Middle Temple Hall, the tributes of the Attorney-General and of Mr. Gladstone drew

from him a moving speech of thanks in which he declared that he seemed to hear the voice of posterity fall from their lips. Never has any high lawyer from abroad been accorded such a reception.

Reviews.

Primitive Law. By A. S. DIAMOND, M.A., LL.M., of Gray's Inn and the North Eastern Circuit, Barrister-at-Law. 1935. Demy 8vo. pp. x and (with Index) 451. London: Longmans, Green & Co. 25s. net.

This learned work, which bears on its every page the evidence of extensive research, and which is written with scholarly exactitude, is a worthy contribution to the study of early law and custom, the term "Primitive Law" being used to indicate law from its earliest beginnings until we have emerged into the full light of legal history. It is a fascinating story that the author has to tell; indeed, just as in a past generation one who listened to F. W. Maitland declared that he made you feel that the history of law in the twelfth century was the only thing in life worth living for, so Mr. Diamond almost persuades us that to accompany him in his masterly examination of the Code of Hammurabi, the Assyrian laws, the Hittite Code, and the rest of them, is a pleasure comparable to that referred to by Maitland's admirer. On such a theme it was, of course, inevitable that the broad and vivid generalisations of Sir Henry Maine, which most of us had been content to accept as sacrosanct, should be subjected to a critical scrutiny; this they certainly receive, and the conclusion is reached that the early chapters of his "Ancient Law" are nothing more than courageous conjectures grounded upon an insufficient acquaintance with the early codes. In particular, the author rejects Maine's theory that law has its historical origin in rules of religion; that primitive law as contrasted with mature law was essentially technical, stereotyped and unchanging; and, further, that primitive law delights in "perplexed ceremonies," "grotesque gestures" and "symbolical acts." On these and certain other points Mr. Diamond appears to make good his contention, but in his reference to Maine's dictum that "there is no system of recorded law literally from China to Peru, which, when it first emerges into notice, is not seen to be entangled with religious ritual and observance," he says he has no doubt that Maine in his mention of Peru had in mind the "Royal Commentaries of the Incas," a translation of which was published in 1869-71. In this we think he must be mistaken, and that it is much more likely that Sir Henry was merely recalling the familiar lines from Johnson's "Vanity of Human Wishes"—"Let observation with extensive view, survey mankind from China to Peru." This, however, is a small matter. It should be added that while a detailed examination and confutation of many of Maine's conclusions occupy a good deal of the author's attention, there is much more in the book about the emergence of legal ideas and the efforts of primitive peoples to formulate legal rules as attested, for example, by the Babylonian and Assyrian clay tablets with their wonderful impressed records of contracts and other legal transactions, which is well worth careful study. Mr. Diamond's scholarly work should attract all those who love to trace the growth of legal concepts and the practical uses to which these were put.

Carriers' Licences under the Road and Rail Traffic Act, 1933. By ERIC F. M. MAXWELL, of the Inner Temple and Northern Circuit, Barrister-at-Law. London: Sweet & Maxwell, Ltd. 15s. net.

The Road and Rail Traffic Act, 1933, makes it an offence for anyone to use a motor car or trailer adapted for the carriage of goods either for hire or in connection with any trade or business carried on by him, unless he is duly and properly licensed. This provision which, at first sight, may seem to be a very simple requirement of the law, nevertheless involves so many complexities and covers so many possibilities that here we have before us a substantial volume of nearly 300 pages dealing with it—apart from the additional fifty pages of appendix necessary to set out the statute itself and its various forms. The learned author has dealt with his subject in eight chapters covering the varieties of licences, the procedure in applying for same, the conditions under which they are granted, the objections that may be raised and the offences that may be committed, and appeals. The work has been done with care and thoroughness, and we have no doubt that the volume will meet with wide approval.

Black Maria, or the Criminals' Omnibus. Conducted by HARRY HODGE. 1935. Crown 8vo. pp. 1012. London: Victor Gollancz, Ltd.; William Hodge & Co. Ltd. 8s. 6d. net.

The "Notable British Trials" Series needs no advocate, and this, a reprint of fifteen of the best introductions in that fascinating collection, is certain of an enthusiastic welcome. This volume has a wide scope, ranging from the dark domestic tragedy of Mary Blandy and the Highland feuds leading up to the judicial murder of James Stewart in the eighteenth century, down to the sordid stories of Ronald True and Alfred Rouse in the twentieth. The contrasting styles of a dozen talented authors have combined to give this selection a variety and a distinction which can be claimed by very few books on crime. When there are no big holes to pick in a book it is merely captious to seek out little ones. For example, the strict constitutional lawyer might well object to the phrase about the Home Secretary "exercising his prerogative of mercy" in the case of Steinie Morrison, but the "non-professional reader who takes an intelligent interest in the working of the criminal law" (and it is for him that the book is designed) will not be irritated by so slight a slip in expression. It is to be hoped that other similar volumes will not fail to appear.

Mr. Justice Avory. By STANLEY JACKSON, Barrister-at-Law. 1935. Demy 8vo. pp. (with Index) 372. London: Victor Gollancz, Ltd. 15s. net.

In so far as this is a biography, it is in the strictest sense a legal biography. Written while Mr. Justice Avory was still alive, it could hardly in the nature of things have penetrated his extra-legal personality, and the author has, therefore, confined himself to an account of his cases—the stones which went to build up the edifice of his career. The simple lines, the severe exterior of that building, we see; the interior is not revealed. Thus it is as an accurate record of the judge as the courts knew him that this work has real value. As for the style, it is at its best when it is at its plainest. Elaborations have their dangers, as, for instance, the mixture of the metaphorical with the actual in describing the "calm spade-work and helpful robe-tugging" of a junior's life. For the sentence noting that "emotional appeal and talent histrionics" form part of the successful defender's stock-in-trade, the responsibility is probably the proof reader's rather than the author's. The cases which form the framework of the book are competently narrated and several long forgotten (such as the "Freethinker" prosecutions in 1883) are well worth reviving in the memory of the legal world.

Books Received.

Copinger on the Law of Copyright. Seventh Edition, 1936. By F. E. SKONE JAMES, B.A., B.C.L., of the Middle Temple, Barrister-at-Law. Royal 8vo. pp. xxiv and (with Index) 617. London: Sweet & Maxwell, Ltd. £2 2s. net.

The Municipal Year Book, 1936. Edited by JAMES FORBES. London: The Municipal Journal Ltd. 30s. net.

Notes of Cases.

House of Lords.

Whelan (Inspector of Taxes) *v.* Alfred Leney & Co. Ltd.; Longman (Inspector of Taxes) *v.* Marston's Dolphin Brewery Ltd. (in Liquidation).

Lord Hailsham, L.C., Lord Blanesburgh, Lord Russell of Killowen, Lord Macmillan and Lord Roche.
9th March, 1936.

Revenue—Income Tax—Lease by Brewers of their Tied Houses—Rent received in excess of Aggregate Annual Value of the Properties as assessed under Sched. A — Whether further Assessment under Sched. D permissible in respect of the Excess—Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), Sched. A; Sched. D.

Appeals by the Crown against an order of the Court of Appeal dated the 26th June, 1934, allowing appeals by Alfred Leney and Co., Ltd., and Marston's Dolphin Brewery, Ltd., from orders of Finlay, J., dated the 15th March, 1934, dismissing appeals from decisions of the Commissioners for Special Purposes of the Income Tax Acts.

The respondents, Leneys, a firm of brewers, owned a number of freehold and leasehold properties, mostly licensed houses, which were let to tied tenants. In October, 1926, they entered into an agreement with another firm of brewers whereby the latter took a lease of all the respondents' properties for thirty-six years at a rent equivalent to the average net profits of the respondents for the three years ended the 30th September, 1926, subject to certain modifications and reductions. The total rents received by the respondents for the properties leased over a period of five years averaged approximately £20,000. The aggregate of the annual values of the properties in question (arrived at by adding together all the individual Sched. A assessments) averaged about £5,500 over the same period. Assessments to income tax were made on the respondents under Sched. D in respect of the amount by which the payments received by them under the leases exceeded the aggregate annual values as appearing in the Sched. A assessment. The respondents appealed to the Special Commissioners, who held that the rents received by the respondents included an element not included for purposes of taxation under Sched. A, and that that element was therefore a profit chargeable to tax under Sched. D. Finlay, J., affirming the decision of the Commissioners, was of opinion that, while the respondents received something as landlords, they received also what was really a trade receipt as brewers. The Court of Appeal was of opinion that the rents payable were payable for the hereditaments demised and for nothing else, and that consequently no assessment under Sched. D was justifiable.

Lord Russell of Killowen, in the course of his speech, referred to a sample tenancy agreement which had been put in evidence. The tie in that agreement was an undertaking by the tenant to purchase certain liquors only from the landlords or their nominees. The word "landlords" included the successors in title of the landlords and the word "tenant" included the executors, administrators and assigns of the tenant. It would seem reasonably clear that the benefit of the tie and the reversion could not be disposed of separately. The landlord owning the reversion might name a nominee, and so long as he remained landlord he could enforce the covenant for the nominee's benefit; the nominee could not. But, the moment the landlord sold the reversion, the nominee would cease to be the landlord's nominee, and a refusal by the tenant to take liquor from a person who was neither the new landlord nor the new landlord's nominee would be no breach of the covenant. There was, accordingly, in his (his lordship's) opinion nothing there which could be separated from the ownership of the land. The value to the lessees of the tie was nothing. It was at most a three months' tie, for the tenant could determine the tenancy on three months' notice. A new tie would have to be imposed on the new tenant. It therefore seemed impossible to say that anything was paid for the tie. The rent was paid for the land, the ownership of which carried with it the power to impose a tie if the existing tenancy determined, and (by abstaining from determining the tenancy) to retain a tie if the sitting tenant were willing to remain. The lessee paid a rent in excess of the aggregate annual values assessed under Sched. A because of the profitable use which he, the lessee (in the light, if their lordships would, of Leneys' experience) hoped to make of the land; and that rent was received by Leneys in respect of their property in land and in respect of nothing else. If that were so, the case was concluded by the decision of their lordships' House in *Salisbury House Estate, Ltd.* v. *Fry* [1930] A.C. 432. The respondents carried on no activities on the land; they were not in possession. They did nothing but receive the rents as owners of the reversions expectant on the determination of the leases they had granted by the agreement of October, 1926. The appeal must be dismissed.

In the case of Marston's Dolphin Brewery, the facts were somewhat different, there having been a lease for thirty-five years at a single rent of £20,000. From the terms of the demise it appeared that the rent had been reserved in respect of some matters other than the land. In respect of these, an apportionment as made by the Special Commissioners was proper: *Campbell* v. *Inland Revenue* (1879), 1 Tax Cas. 234). But to the decision of the Commissioners that £15,000 out of the £20,000 was "attributable to subject matters of the lease other than corporeal hereditaments," their lordships' decision in *Leneys' Case* applied. The Court of Appeal had reversed that decision of the Special Commissioners and the appeal now brought against that order failed.

Counsel: *The Solicitor-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the Crown in both appeals; *A. M. Latter*, K.C., and *Cyril King*, for the respondent companies.

Solicitors: *Solicitor of Inland Revenue; Godden, Holme and Ward.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Appeal.

Archie Parnell & Alfred Zeitlin Ltd. *v.* Theatre Royal (Drury Lane) Ltd.

Slesser, Romer and Greene, L.JJ.
28th February and 2nd, 3rd, 4th and 5th March, 1936.

Contract — Theatrical — Play — Touring Rights—Talking Film Version—Exhibition in Provinces—Resulting Loss of Profits—Damages.

Appeal from a decision of Eve, J. (79 Sol. J. 574).

In an action against *Theatre Royal (Drury Lane) Ltd.* and *C. B. Cochran*, the theatrical producer, the plaintiffs alleged that by a written agreement of July, 1932, between them and the defendants, the defendants had granted them the sole and exclusive licence to perform the play "Cavalcade," by Noel Coward, with living actors on tour in the provinces for a period of five years. Clause 14 provided that no mechanical reproduction of the play by talking films or otherwise should be made or done in the territory agreed during the continuance of the rights granted. The plaintiffs contended that the agreement was valueless unless it protected them from the advertising and showing of a talking film reproduction, and that the defendants impliedly warranted jointly that the motion picture rights and the motion picture copyright in the play had not been sold and would not be sold and that they were in a position to prevent the making and advertising of a talking film in the provinces during the continuance of the plaintiffs' rights. In fact, the motion picture rights and the motion picture copyright had been bought by the Fox Film Corporation in March, 1932, from Noel Coward and C. B. Cochran. Theatre Royal (Drury Lane) Ltd. denied liability

and pleaded that their rights in the play had been sold without their knowledge or consent, and said that if they were held liable they claimed against C. B. Cochran. Eve, J., gave judgment for the plaintiffs for £5,000 damages, holding that they were entitled to recover against both defendants.

SLESSER, L.J., dismissing the defendants' appeal, said that it had been argued that the liability under cl. 14 was not joint but several, and that the defendant company were not responsible for any mechanical reproduction of the play in contravention thereof. But the obligation was joint, and in the event of a breach, each of the licensors were equally liable. As to the amount of damages, the learned judge had given effect to the principles in *Hadley* v. *Baxendale* (9 Ex. 341) and the court would not interfere (see *Flint* v. *Lovell* [1935] 1 K.B. 354, at p. 360).

ROMER and GREENE, L.JJ., agreed.

COUNSEL: *Beyfus*, K.C., and *K. Shelley*; *Parry*, K.C., and *A. M. Topham*; *Sir Patrick Hastings*, K.C., and *T. Mathew*.

SOLICITORS: *Gery & Brooks*; *J. D. Langton & Passmore*; *S. Myers & Son*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Churchill & Sim *v.* Goddard.

Lord Roche, Scott, L.J., and Eve, J.
27th and 28th February and 18th March, 1936.

PRINCIPAL AND AGENT—SALE OF GOODS—SELLER ABROAD—*Del Credere* AGENT—BILLS OF EXCHANGE—DRAWN BY AGENTS AND ACCEPTED BY BUYER—PAYMENT TO SELLERS BY AGENTS—GOODS REJECTED BY BUYER—AGENTS' CLAIM UNDER BILLS AGAINST BUYER.

Appeal from a decision of Branson, J.

In November, 1932, the plaintiffs, a firm of brokers in the timber trade, agreed to act as agents in the United Kingdom for a firm of timber shippers in Finland. They were to "stand full 100 per cent. *del credere*" for all sales closed through them, the sellers paying 5½ per cent. cash commission and *del credere* on all fully paid invoice amounts, payments for deliveries to be made in cash against shipping documents, with right to the shippers either to draw on the plaintiffs at three days' sight or to send to the plaintiffs the shipping documents direct, in which case the plaintiffs were to pay the net invoice amounts within three days to the shippers' bank. In March, 1934, the plaintiffs sold to the defendant and bought of the shippers a quantity of wood to be shipped in June and September. The contract was on the f.o.b. form of contract adopted by the Timber Trade Federation of the United Kingdom. Clause 11 provided for payment by acceptance of bills of exchange, for shipping documents, or, at buyer's option, in cash, as above set out. Clause 13 provided that the property in the goods should pass to the buyers when the goods were put on board. Clause 17 provided for the settlement of disputes by arbitration. On the 9th October the shippers sent the shipping documents to the plaintiffs with directions to deliver them to the defendant against receipt of his acceptance at three days' sight. This was a mistake, the contract of sale having given the defendant the option to pay by cash at three days' sight or by "acceptance of sellers' or authorised agents' drafts" at four months from the date of the bill of lading. On the 12th October the plaintiffs forwarded the shipping documents to the defendant, and on the 22nd October sent two drafts to the defendant for acceptance. These were returned accepted on the 26th October. The form was as follows: "Four months after date pay this sole bill of exchange to our order £1,329 2s. 9d.: value received in wood goods per s.s. 'Sonja.'" Meanwhile, on the 23rd October, the plaintiffs in pursuance of their contract with the shippers, had paid to the bank to their credit the invoice amount of the timber shipped, less their commission, thus discharging their *del credere* obligations under the agency contract. The wood having arrived, the defendant rejected it as not being good tender under the contract. Arbitration proceedings were begun to decide whether he was entitled so to do. In the present action the plaintiffs claimed against the defendant as acceptor under the two bills. The defendant pleaded that there had been no consideration for the acceptance or else a failure of consideration, and that the plaintiffs had acted throughout, and were now suing, merely as the shippers' agents. The plaintiffs, in reply, said that they had acted as *del credere* agents and that they were not suing as the shippers' agents. Branson, J., gave judgment for the defendant. (Subsequently, in the arbitration proceedings, it was decided that the defendant was entitled to reject the wood).

LORD ROCHE, allowing the plaintiffs' appeal, said that Branson, J., had decided in favour of the defendant on the ground that the plaintiffs had acted merely as the shippers' agents and were suing as such. The plaintiffs had contended that the acceptance created a new contract, under which the defendant agreed to pay them the amount of the acceptances, irrespective of any question which might arise between him and the shippers, the consideration being the handing over by the plaintiffs to him of the shipping documents. Branson, J., held that there was no contract independent of the sale contract. The learned judge was wrong in holding that the plaintiffs were throughout the shippers' agents, though they were their authorised agents to receive payment when the shipping documents were handed over. Someone had to be nominated, but in dealing with either money or a bill of exchange he might hold it either for the seller or for himself in his own right, according to his relationship with the seller. The bills were the only contracts between the plaintiffs and the defendant. There was no difference between the position of the defendant and that of a bank if payment to a bank had been directed by the shippers. If the bank had settled with the shippers, as the plaintiffs had done here, it could have collected the proceeds of the bills despite the existence of a claim against the shippers on contracts to which it was not a party. The fact that the plaintiffs were the agents who effected the sale was irrelevant. Further, no failure of consideration for the bills of exchange could be shown.

SCOTT, L.J., and EVE, J., agreed.

COUNSEL: *F. Tucker*, K.C., and *Hon. Hubert Parker*; *Miller*, K.C., and *R. Gething*.

SOLICITORS: *Coward, Chance & Co.*; *Blundell, Baker & Co.*, agents for *Snowball, Kyffin-Taylor & Pruddah*, of Liverpool.

Reported by FRANCIS H. COWPER Esq., Barrister-at-Law.]

With *v.* O'Flanagan.

Lord Wright, M.R., Romer, L.J., and Clauson, J.
12th, 13th and 16th March, 1936.

CONTRACT—RESCISSION—SALE OF MEDICAL PRACTICE—REPRESENTATION OF TAKINGS TRUE WHEN MADE—DECLINE BEFORE SIGNATURE OF CONTRACT—WHETHER DUTY TO DISCLOSE TO PURCHASER.

Appeal from a decision of Bennett, J.

In January, 1934, a medical practice was introduced to the plaintiffs through a medical agency, the agent representing that it was doing £2,000 a year and that there were 1,480 panel patients. This statement was confirmed by the defendant whose practice it was. Subsequently, he was taken seriously ill and as a result of his absences from time to time the receipts of the practice fell off considerably, so that in the three weeks preceding the 1st May it was only doing an average of £5 a week. On the 1st May, the plaintiffs agreed to purchase the practice and went into possession. They found then that there was no practice going on at all, and that the number of panel patients was under 1,250. In answer to a letter from their

solicitors, the defendant's solicitors replied that no representations had been made as to the present state of the practice, but only as to the takings during a period of a little over two years, terminating at the end of 1933. In this action, claiming rescission of the contract, it was admitted that the representations of the defendant were true at the time they were made. Bennett, J., dismissed the action.

LORD WRIGHT, M.R., allowing the defendant's appeal, referred to *Davies* v. *London and Provincial Marine Insurance Co.*, 8 Ch. D. 469, at p. 478; *In re Scottish Petroleum Co.*, 23 Ch. D. 413; *Traill* v. *Baring*, 4 De G. J. & S. 318, at p. 329; *Smith* v. *Kay*, 7 H.L.C. 750, at p. 769; *Brownlie* v. *Campbell*, 5 App. Cas. 925, at p. 950. The duty to disclose was not limited to the case of contracts *uberrimæ fidei* or to any cases in which a confidential relationship created a special duty of disclosure. The authorities did not justify the limitation put on *Traill* v. *Baring*, *supra*, by Bennett, J.

COUNSEL: *Topham*, K.C., and *H. Buckmaster*; *Morris*, K.C., and *Dickens*.

SOLICITORS: *Merton Jones, Lewsey & Jefferies*; *David Morris & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Imperial Chemical Industries, Ltd.

Lord Wright, M.R., Romer, L.J., and Clauson, J.
9th, 10th and 11th March, and 1st April, 1936.

COMPANY—SCHEME—REDUCTION OF CAPITAL—APPROVAL—RESOLUTION—MEETING OF HOLDERS OF DEFERRED SHARES—STRANGERS PRESENT—CIRCULAR—WHETHER ADEQUATE—HOLDINGS OF DIRECTORS NOT DISCLOSED.

Appeal from a decision of Eve, J.

On the 1st May, 1935, the company resolved on a reduction of its capital. The petition for the court's confirmation was opposed by certain holders of deferred shares. Eve, J., confirmed the reduction of capital from £95,000,000 to £89,565,859. The opposing shareholders appealed.

CLAUSON, J., delivering the judgment of the court, dismissing the appeal, said that the court must see that the necessary meetings had been properly held and the necessary majorities obtained, and that the reduction did not operate unfairly towards any class of shareholders, considering the operation of the whole scheme of re-organisation of capital. If any class had voted under a serious misapprehension as to material facts, the court would refuse to confirm the reduction. The first objection made in this case was that on the true construction of Art. 44 of the company's articles it had not power to reduce its capital by cancelling 5½ million of deferred share capital. It was said that its only power of reduction was by paying off capital, cancelling capital lost or unrepresented by available assets or reducing the liability on the shares, and that the words "or otherwise as may seem expedient" did not give power to reduce capital in any other way than the three specifically mentioned. This was not so. The company could reduce capital in any way authorised by the statutes. The second objection was based on Arts. 71 and 72, and it was said that there had been no separate meeting of holders of deferred share capital, and that in so far as the reduction of capital would affect their separate rights, it must be treated as invalid. Notice had been sent to all shareholders of an ordinary general meeting at the Central Hall, Westminster, on the 1st May, 1935, at 10.30 a.m., and of an extraordinary meeting to be held on the same date and at the same place at 10.45 a.m., or so soon as the business of the ordinary general meeting was concluded. With this notice the holders of ordinary shares received a notice of a separate meeting of their class to be held on the same date and at the same place at 11 a.m., or so soon as the extraordinary general meeting was concluded, and the holders of deferred shares received notice of a separate meeting of their class to be held on the same date and at the same place at 11.15 a.m., or so soon as the meeting of the ordinary shareholders was concluded. A poll was demanded at the extraordinary meeting, which was accordingly adjourned. The meeting of the ordinary shareholders being then held, a number of shareholders not belonging to the class remained, but it was not alleged that they voted. A poll was demanded and the meeting having been adjourned, the meeting of holders of deferred shares was opened. No attempt was made to clear the room of other shareholders, but those outside the class did not vote. It had been argued that in these circumstances no valid separate meeting of holders of deferred shares was held, since under Art. 76 no member was entitled to attend a class meeting unless he held shares of the class intended to be affected by the resolution. But a meeting could be a perfectly good meeting of a class though some strangers to whose presence no one in fact objected were within the same four walls, and this objection failed. The third objection was that the circular issued with the notice of the meeting was inadequate. His lordship considered the specific objections and referred to *In re Dorman Long & Co.* [1934] Ch., at p. 665, where Maugham, J., said that the very object of such circular would be defeated if it were so extended as to state all relevant facts. The court would scrutinise a circular carefully, but where it was not suggested that the directors were not putting forward their best skill to give a fair picture of the company's position, the question was not whether it might have been differently framed, but whether such imperfections as were found in it had, with or without other circumstances, caused the majority to approve the proposals under a serious misapprehension of the position. Such a suggestion was unreasonable in this case. It had been complained of that the holdings of the directors in the various classes of shares were not stated. Such disclosures were not incumbent. The unreported case of *Hughes* v. *Union Cold Storage* before Eve, J., on the 19th July 1934, where it was held that a resolution was not binding on a minority where the circular recommending the reduction of capital suppressed the fact that two of the directors had an overwhelming personal interest in the matter, of such a character that they could hardly fail to be biased, this interest being a most material fact bearing on the desirability of the resolution, had no application to the point in question. The fourth objection was that the scheme was not one which the court should approve or which an intelligent and honest shareholder might reasonably approve. His lordship referred to *Allen* v. *Gold Reefs of West Africa Ltd.* [1900] 1 Ch. 671, *In re Alabama, New Orleans, Texas & Pacific Junction Rly. Co.* [1891] 1 Ch., at pp. 243, 247, and *In re English, Scottish and Australian Chartered Bank* [1893] 3 Ch., at p. 409, and said that the decision which had been come to was not one which the court would overrule. The appeal must be dismissed with costs.

COUNSEL: *Wallington*, K.C., and *Stenham*; *Simonds*, K.C., *Cohen*, K.C., and *C. W. Turner*.

SOLICITORS: *Nordon & Co.*; *William Morris*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Alderman *v.* Great Western Railway Co.

Slesser, Greene and Scott, L.JJ. 24th and 25th March, 1936.

WORKMEN'S COMPENSATION—RAILWAY TICKET—COLLECTOR—LODGINGS TO BE REASONABLY CLOSE TO STATION—ADDRESS LEFT WITH EMPLOYERS FOR EMERGENCY DUTY—ACCIDENT WHILE GOING FROM LODGINGS TO STATION—WHETHER IN COURSE OF EMPLOYMENT.

Appeal from Marylebone County Court.

A railway ticket collector who lived at Oxford was required by his duties to go from Oxford to Paddington and thence to Swansea. When his day's work ended at 6.30 p.m. he had to stay the night in Swansea in lodgings of his own choice, going on duty at 8.30 a.m. and returning to Paddington, and

thence to Oxford in the evening. During his period of rest, he was liable to be called upon to do emergency work as a guard, and he was obliged to leave his address with his employers and not to lodge too far away. Going from his Swansea lodgings to the station, he slipped and fell, sustaining injuries. His Honour Judge Snagge held that the accident did not arise out of his employment, and that he was not entitled to compensation under the Workmen's Compensation Act.

SLESSER, L.J., dismissing the employee's appeal, said that it was admitted that where there was no obligation to use a particular route or a particular means of transit, a man's work normally began at the place of it, and the employer was not responsible for accidents occurring before, but it was said that this man was to some extent limited in the choice of his lodgings and was bound to be in a certain place in order that he might be found, and that, therefore, he was, in performance of a duty under his contract of service, found in the place where the accident occurred (see *St. Helens Colliery Co.* v. *Hewitson* [1924] A.C. 59, at p. 95, and *London and North Eastern Railway Co.* v. *Brentnall* [1933] A.C. 489, at pp. 492, 493). The fact that he was on the highway was not conclusive against the claim, and if he had been under a duty to go to a particular hostel, the normal method of going from such an approved place to his work might have been something done in the course of his employment. The test was whether at the time of the accident he was doing something which he was employed to do. This man was not in these particular lodgings or in this particular street in performance of any duty under his contract of service. Though he had to leave his address with the company, he was under no obligation to be there at any particular time. This case resembled *Philbin* v. *Hayes*, 11 B.W.C.C. 85.

GREENE and SCOTT, L.JJ., agreed.

COUNSEL: *William Shakespeare*; *Cave*, K.C., and *D. Bartley*.

SOLICITORS: *Pattinson & Brewer*; *A. G. Hubbard*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Jones *v.* Smith.

Slesser, Greene and Scott, L.JJ.
30th March, 1936.

WORKMEN'S COMPENSATION—AWARD—EMPLOYER TO PAY COMPENSATION AND ALSO COSTS—AMOUNT OF COSTS ACCEPTED BY EMPLOYEE—APPEAL BY HIM AGAINST AMOUNT OF COMPENSATION—WHETHER AWARD APPROBATED.

Appeal from Carnarvon County Court.

A workman having sustained injury received compensation under the Workmen's Compensation Act at the rate of £1 3s. 6d. a week. This was subsequently reduced to 7s. 7d. The employer having terminated the payments, the workman applied for arbitration. The award made by the learned county court judge in December, 1935, ordered (1) that the employer should pay the workman 3s. 1d. a week from the 27th May, 1935, (2) that he should pay him £4 6s. 4d. being the amount of the weekly payments from the 27th May, and (3) that the employer should pay costs on Scale B. The costs having been taxed at £25 7s. 5d. they were paid in January, 1936, at the request of the workman's solicitor, to him. The workman having appealed against the quantum of the award, the employer objected that as he had in part enforced the award he could not appeal against another part of it.

SLESSER, L.J., in giving judgment, said that it was argued for the respondent that the appellant having accepted a cheque for the taxed costs could not approbate the award and at the same time appeal from it. The leading case on the subject was *Johnson* v. *Newton Fire Extinguisher Co.* [1913] 2 K.B. 111 at p. 114 (see also *Josey* v. *Vincent*, 9 B.W.C.C. 474; *Jones* v. *Winder*, 7 B.W.C.C. 204; *Ward* v. *Cundall*, 10 B.W.C.C. 611; *Harris* v. *Minister of Munitions*, 13 B.W.C.C., 324; *Reeves* v. *S. Smith & Son*, 15 B.W.C.C. 190). The appellant cited *Moore* v. *Cunard Steamship Co.* 28 B.W.C.C. 162, but that case afforded no assistance. Whatever the case might be where a workman had taken the pains to protect himself, if he could do so by proper action, when he had taken the money *simpliciter* it was impossible to say that he had not approbated the award precluding himself from questioning its validity.

GREENE and SCOTT, L.JJ., agreed.

COUNSEL: *William Shakespeare* and *J. J. Roberts*; *Beney*.

SOLICITORS: *Pattinson & Brewer*, agents for *W. E. J. Jones*, of Bangor; *Barlow, Lyde & Gilbert*, agents for *R. Vincent Johnson*, of Llandudno.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Parent Trust and Finance Co. Ltd.

Bennett, J. 18th, 19th and 20th March, 1936.

COMPANY — LOAN — INTEREST — GUARANTEE — COMPULSORY WINDING UP—WHEN COMMENCING—REDUCTION OF RATE OF INTEREST—COMPANIES ACT, 1929 (19 & 20 Geo. 5, c. 23), ss. 175, 262.

In March, 1929, the M. Company advanced £250,000 to the A. Company, the P. Company guaranteeing due repayment with interest at 8 per cent. per annum, the security for the charge being 270,000 £1 shares in the I. Company, which in the events which happened were never issued. By August, 1929, the amount of the loan had been reduced to £150,000. On the 28th June, 1932, a petition for the compulsory winding up of the P. Company was presented, and an order was made on the 11th July. At that time, the amount due with interest at 8 per cent. was £184,685. The joint liquidators of the M. Company, which was in voluntary liquidation and had a substantial surplus, claimed to be creditors of the P. Company, whose liquidator however rejected their proof for the amount outstanding. Bennett, J., having reversed the liquidator's decision, the question arose (1) whether on the sum for which the M. Company were admitted to prove they were entitled to calculate interest down to the 28th June, 1932, the day the petition for winding up was presented, or to the 11th July, the day the order was made (see Companies Act, 1929, s. 175), and (2) whether the rate of interest was reducible from 8 per cent to 5 per cent .(see s. 262).

BENNETT, J., in giving judgment, said that the first point had been decided by Maugham, J., in *In re Agricultural Wholesale Society* [1929] 2 Ch. 261. It had been argued that that case was in conflict with *In re Law Car & General Insurance Corporation* [1913] 2 Ch. 103, at p. 113; *In re British American Continental Bank Ltd.*; *Goldzicher and Penso's Claim* [1922] 2 Ch. 575, at p. 582, and *In re British American Continental Bank Ltd.*; *Credit Général Liegois' Claim* [1922] 2 Ch. 589, but these cases did not deal with the exact point. The decision of Maugham, J., should be followed. It followed *In re Humber Ironworks & Shipbuilding Co.*; *Warrant Finance Co.'s Case*, 4 Ch. App. 643. That decision was not ambiguous. The court clearly meant that the date on which the petition was presented was the date when the winding up commenced (see Giffard, L.J., at p. 647, and also *In re Contract Corporation*; *Ebbw Vale Co.'s Case*, 5 Ch. App. 112). In this case, therefore, the interest stopped at the date when the petition to wind up was presented. Further, on the second point, the rate of interest should be reduced from 8 per cent. to 5 per cent. from the 29th August, 1929, down to the date of the presentation of the winding-up petition (see *In re Bush* [1930] 2 Ch. 202). Accordingly, the order should be that the proof be admitted with interest at the rate of 5 per cent. from the 29th August, 1929, to the 28th June, 1932.

COUNSEL: *Sir William Jowitt*, K.C., *Pritt*, K.C., and *Wilfrid Hunt*; *Simonds*, K.C., and *Charles Romer*.

SOLICITORS: *Simmons & Simmons*; *Linklaters & Paines*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re **Stillwell; Stillwell** *v.* **Stillwell.**

Bennett, J. 25th March, 1936.

Administration—War Savings Certificates—Nomination—Subsequent Lunacy of Nominator—Payment into Court—Disposition—Person Entitled to Fund Representing Certificates—Lunacy Act, 1890 (53 Vict. c. 3), s. 123 (1)—War Savings Certificates Regulations, 1919 (S.R. & O. 1919, No. 2), Nos. 28, 29, 30.

An intestate who died in February, 1934, had, in 1929, executed a written nomination in the form prescribed by the War Savings Certificates Regulations, 1919, in respect of War Savings Certificates to the value of £580 of which he was possessed. Under it the person named was to receive at his death the whole amount due under the certificates. In April, 1933, by an order of the Master in Lunacy under the Lunacy Act, 1890, she was appointed receiver of his property, and in pursuance of the order surrendered the certificates to the Post Office, £580 16s. 11d. being paid into court in respect of them and invested in the purchase of £577 2s. 9d. 3½ per cent. War Stock. The question now arose whether this sum passed to the nominee or formed part of the estate of the deceased.

Bennett, J., in giving judgment, referred to the War Savings Certificates Regulations, regulations 28, 29 and 30, and to the Lunacy Act, 1890, s. 123 (1), and said that the administrator contended that what was done by order of the Master in Lunacy was not a disposition under that section: see *In re Walker* [1921] 2 Ch. 63. However, the savings certificates were, in substance, investments, and what was done was a disposition. The section applied and the nominee was entitled to the property.

Counsel: *N. Faulks; R. W. Turnbull* and *L. Pile; George Slade.*

Solicitors: *Brash Wheeler, Chambers, Davies & Co.; Ford, Michelmore & Co.*, agents for *Greenland, Houchen & Co.*, of Attleburgh.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

In re **Gurdon; Reynolds** *v.* **Ex-Services Welfare Society.**

Bennett, J. 2nd April, 1936.

Will—Construction—Gift to "Lord Milner's Homes for Mentally Disabled Soldiers"—Ex-Services Welfare Society Entitled.

The testatrix, who died in March, 1935, by her will left her residuary estate to "Lord Milner's Homes for Mentally Disabled Soldiers." No society bore that name, but the late Sir Frederick Milner had been president of the Ex-Services Welfare Society, to which the testatrix had contributed for many years before her death.

Bennett, J., in giving judgment, said that there was no doubt that the testatrix intended to give her residue to the Ex-Services Welfare Society and it was entitled to receive it.

Counsel: *Radcliffe*, K.C., and *G. Upjohn; Gover*, K.C., and *Ackroyd; Andrewes-Uthwatt* (for the Attorney-General).

Solicitors: *Reynolds & Reynolds; Perowne & Co.; Treasury Solicitor.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Taylor *v.* **Webb.**

du Parcq, J. 5th and 6th March, 1936.

Landlord and Tenant—Landlord's Covenant to Repair Outside Walls and Roof—Exception for "Fair Wear and Tear"—Failure by Landlord to Repair Defects—Damage arising from that Failure—Landlord's Liability—Skylights—Whether "Fixtures"—Rent in Arrear—Whether Tenant entitled to Claim in respect of Failure to Repair.

Action and counter-claim for arrears of rent and breach of covenant in a lease, respectively.

The defendant was the tenant of certain premises under a sub-lease. The plaintiff was the sub-lessor of the premises, and his claim for arrears of rent was not disputed by the defendant. The sub-lease provided *inter alia* that the tenant should keep the interior of the premises, and the fixtures, in good or tenantable repair and that the landlord should keep the outside walls and roof in good or tenantable repair, "fair wear and tear excepted." In 1934, certain rooms in the premises became uninhabitable. Repairs effected by the landlord in 1935 proved ineffective. It was contended on his behalf, relying on *Terrell* v. *Murray* (1901), 17 T.L.R. 570, that, where the lack of repair was due to lapse of time and the action of the elements, the landlord was not liable.

du Parcq, J., said that the defendant's argument would have had a better chance of success some years ago than it had now. It had been conceded that he would be liable to repair damage caused to the roof and walls by an earthquake. *Haskell* v. *Marlow* [1928] 2 K.B. 45, made it unnecessary to consider the older decisions. In that case it was held that it was impossible to say that the expression "reasonable wear and tear" entirely protected those responsible for repairing. He (his lordship) was unable to draw any distinction between the expression "reasonable wear and tear" in that case, and the expression "fair wear and tear" in this. The words of Salter, J., at the bottom of p. 56 were material in considering the present case. It had been proved that the walls and roof had not been properly repaired, and it lay on the landlord to show that the lack of repair came within the exception. In considering whether the landlord had shown that, he (his lordship) must remember that the landlord was bound to do such repairs as might be necessary to prevent the consequences of fair wear and tear from producing others which fair wear and tear would not produce directly. In the ordinary course of things there might be a leak here and there. If the landlord had notice of that, he ought to effect repairs to the best of his ability. In this case, he had wrongfully allowed the defects to go from bad to worse. It had also been contended for the defendant that skylights in the roof, which were leaking, were not part of the roof but fixtures, for the repair of which the tenant was liable under the lease. In *Boswell* v. *Crucible Steel Co.* [1924] 1 K.B. 119, it had been held that "fixtures" did not include something forming part of the original structure of a building. In his (his lordship's) opinion, a skylight was not a fixture and did not come within the clause in the lease. It did not follow that the skylights were part of the roof, although in this case, his lordship thought, they were. If they were not, the rooms would to some extent be without a roof. They were not to be regarded as windows simply because they gave light. They afforded protection against the elements. Lastly, it had been argued that the tenant could not make his claim, because he was in arrear with his rent. In *Dawson* v. *Dyer* (1833), 5 B. & Ad. 584, and *Edge* v. *Boileau* (1885), 16 Q.B.D., it had been held that a tenant was entitled to claim in respect of breach of a covenant for quiet enjoyment, although he was in arrear with his rent. The defendant's case here was even stronger. He (his lordship) held that the landlord's covenant to repair and the tenant's covenant to pay rent were independent covenants, and that the tenant, who had not paid all his rent, was nevertheless entitled to claim damages in respect of repairs not done. The plaintiff was entitled to judgment for the amount of rent in arrear, and the defendant was entitled to damages for the plaintiff's omission to repair.

Counsel: *Joseph Ricardo*, for the plaintiff; *Leonard Minty*, for the defendant.

Solicitors: *Martyns & Gane; J. Prag.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Wicks.

Talbot, Macnaghten and du Parcq, JJ.
10th, 11th and 17th February, 1936.

CRIMINAL LIBEL—LIKELIHOOD THAT THE LIBEL WILL LEAD TO BREACH OF PEACE—WHAT PROSECUTION MUST PROVE—LIBEL ACT, 1843 (6 & 7 Vict., c. 96), ss. 4 and 5.

The appellant was convicted before the Recorder of London at the Central Criminal Court on the 10th January, 1936, upon an indictment which charged him on the first count with publishing a defamatory libel concerning Francis James Ward Gurney, a solicitor, knowing it to be false, and on the second count with publishing the libel, with no averment that the appellant knew it to be false, the offences charged being made punishable by ss. 4 and 5, respectively, of the Libel Act, 1843. The appellant was convicted on both counts and sentenced by the Recorder to twelve months' imprisonment. The libel was contained in a letter addressed by the appellant to one, Chapman, who, at the date when it was written, had been arrested and charged with forgery and other criminal offences at the instance of the Sun Life Assurance Company of Canada, for which company Gurney acted. In evidence Gurney stated that, in the course of his duties, he had come into contact with the appellant because there had been, between the appellant and the company and some of its servants, litigation which terminated unsuccessfully for the appellant. It was not suggested that the letter in question was not defamatory of Gurney. There was no plea of justification. The Recorder rejected a submission, made on behalf of the appellant, that there was no case to go to the jury because there was no evidence that the libel was likely to result in a breach of the peace, and directed the jury in these words: "A defamatory libel consists in the writing and publishing of defamatory words of any living person, words calculated or intended to provoke him to wrath or expose him to public hatred, contempt, or public ridicule, or damage his reputation . . . words written of a man which are likely to provoke him to commit a breach of the peace, or, if seen by others, to hold him up to hatred, ridicule or contempt, or to damage his reputation." *Cur. adv. vult.*

DU PARCQ, J., giving the judgment of the court, said that the allegations against Gurney must be taken as being false. In the opinion of the court, the view taken by the Recorder was right. It was true that a criminal prosecution for libel ought not to be instituted, and, if instituted, would probably be regarded with disfavour by judge and jury, if the libel complained of was of so trivial a character as to be unlikely either to disturb the peace of the community or seriously to affect the reputation of the person defamed. Reference had been made to well-known passages in Hawkins' "Pleas of the Crown" and in the judgment in *Reg.* v. *Labouchere* (1884), 12 Q.B.D. 320, which emphasised that truth. It was also true that, as Lush, J., said in *Reg.* v. *Holbrook* (1878), 4 Q.B.D. 42, at p. 46, libel was ranked among criminal offences "because of its supposed tendency to arouse angry passion, provoke revenge, and thus endanger the public peace." There was, however, in the judgment of the court, no ground for the suggestion made at the Bar that the prosecution must prove that the libel in question would have been unusually likely to provoke the wrath of the person defamed, or that the person defamed was unusually likely to resent an imputation upon his character. The court found no support for that theory in any judgment. On the contrary, the law remained what it was stated to be in the year 1812 by Mansfield, C.J., in *Thorley* v. *Lord Kerry* (1812), 4 Taunt. 355, at p. 364. It had been recognised at the beginning of the eighteenth century that libel was an exception to the general rule that *mens rea* was necessary to constitute a criminal offence (*R.* v. *Walter* (1799), 3 Espinasse, 21). It could not be suggested that the libel in the present case was one which any jury would have been justified as regarding as trivial. That ground of appeal, as well as other grounds advanced, failed, and the appeal must accordingly be dismissed.

COUNSEL: *W. A. L. Raeburn* and *Glanville Brown*, for the appellant; *Sir Patrick Hastings*, K.C., and *G. B. McClure*.

SOLICITORS: *Gower, Pollard, Thorowgood & Tabor; Freshfields, Leese & Munns.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.

Obituary.

Mr. J. WHITEHEAD, K.C.

Mr. James Whitehead, K.C., a distinguished patent lawyer, of Fig Tree Court, Temple, died at his home at Hampstead on Friday, 3rd April, at the age of fifty-eight. Mr. Whitehead, who was educated at the Imperial College of Science and Technology, of which he was a Fellow, was called to the Bar by Gray's Inn in 1910, and was elected a Bencher in 1924. He took silk in 1923, and became an additional member of the General Council of the Bar in 1932. He was Chairman of the Departmental Committee on the dating of patents and a member of the Departmental Committee on the proposed amendment of the Patents and Designs Acts. Last December he succeeded the late Mr. Edward Shortt, K.C., as chairman of the committee set up to investigate complaints under the milk marketing scheme.

Mr. F. H. JAGGER.

Mr. Frank Herbert Jagger, solicitor, head of the firm of Messrs. Jagger & Clement Jones, of Wrexham, died at Llangollen on Friday, 3rd April, at the age of seventy-one. Mr. Jagger was admitted a solicitor in 1890.

Mr. W. A. A. LARGE.

Mr. William Abbott Abraham Large, retired solicitor, of Brighton and Worthing, died at Felpham, Bognor Regis, on Thursday, 2nd April. Mr. Large was admitted a solicitor in 1884.

Mr. C. G. LEATHAM.

Mr. Claude Guy Leatham, solicitor, senior partner in the firm of Messrs. Claude Leatham & Co., of Wakefield and Castleford, died in a London nursing home on Wednesday, 1st April, at the age of forty-nine. Mr. Leatham, who was educated at Charterhouse and Cambridge, was admitted a solicitor in 1911. He succeeded his father as Clerk to the County Justices at Pontefract and Castleford.

Mr. L. W. MOORE.

Mr. Leonard William Moore, solicitor, a partner in the firm of Messrs. Clutton & Moore, of Bristol, died recently at the age of fifty-seven. Mr. Moore was admitted a solicitor in 1902.

Mr. J. F. W. WHEELER.

Mr. John Frederick Walter Wheeler, solicitor, senior partner in the firm of Messrs. Wheeler, Brill & John, of Oxted, Surrey, died on Sunday, 22nd March. Mr. Wheeler, who was admitted a solicitor in 1905, was Clerk to the Justices for the Godstone Petty Sessional Division for many years. He retired from that office about two years ago.

Mr. S. WILLIAMS.

Mr. Samuel Williams, solicitor, senior partner in the firm of Messrs. Johnstone, Williams & Walker, of Nottingham, died on Wednesday, 1st April, in his eightieth year. Mr. Williams served his articles with Messrs. Acton and Marriott, of Nottingham, and was admitted a solicitor in 1887.

Mr. F. B. WYATT.

Mr. Fred B. Wyatt, retired solicitor, of South Molton, and a former Mayor of the borough, died recently. He was admitted a solicitor in 1891, and became a partner in the firm of Messrs. Crosse, Wyatt & Vellacott. He was Registrar of South Molton County Court, Clerk to the Magistrates, and Clerk to the Rural District Council.

Parliamentary News.

Progress of Bills.

House of Lords.

Brighton Marine Palace and Pier Bill.
Read Third Time. [2nd April.

British Shipping (Continuance of Subsidy) Bill.
Read Third Time. [2nd April.

North Metropolitan Electric Power Supply Bill.
Reported, with Amendments. [1st April.

Public Health Bill.
Read Second Time. [2nd April.

Rhymney Valley Sewerage Board Bill.
Reported, with Amendments. [1st April.

Rickmansworth and Uxbridge Valley Water Bill.
Reported, with Amendments. [1st April.

South Essex Waterworks Bill.
Read Third Time. [2nd April.

South Suburban Gas Bill.
Reported, with Amendments. [1st April.

Tring Gas Bill.
Read Third Time. [2nd April.

Unemployment Insurance (Agriculture) Bill.
Reported. [6th April.

Warkworth Harbour Bill.
Read Third Time. [2nd April.

House of Commons.

Bedwellty Urban District Council Bill.
Read Second Time. [6th April.

Cornwall Electric Power Bill.
Read Second Time. [6th April.

Gas Light and Coke Company (No. 1) Bill.
Reported, with Amendments. [2nd April.

Hereford Corporation Bill.
Reported, with Amendments. [6th April.

Kingston-upon-Hull Corporation Bill.
Read Second Time. [6th April.

Local Authorities (Enabling) Bill.
Withdrawn. [3rd April.

Mersey Docks and Harbour Board Bill.
Read Third Time. [2nd April.

North Wales Electric Power Bill.
Reported, with Amendments. [2nd April.

Sugar Industry (Re-organisation) Bill.
Amendments considered. [2nd April.

Swansea and District Transport Bill.
Read Second Time. [6th April.

Tring Gas Bill.
Read First Time. [2nd April.

Uckfield Water Bill.
Reported, with Amendments. [2nd April.

Questions to Ministers.

COURTS OF SUMMARY JURISDICTION.

Lieut.-Commander Fletcher asked the Home Secretary whether he will consider the appointment of a Royal Commission to inquire into the whole question of the magistracy with a view to rectifying the many existing anomalies and securing a more even and efficient administration of justice.

Mr. Lloyd: It seems doubtful whether a Royal Commission with so wide a field of reference as is suggested would be the most effective method of attaining the object which the

hon. Member has in view. But consideration is being given to the question whether inquiries might profitably be instituted into specific matters of special importance connected with the organisation and procedure of the courts of summary jurisdiction.

Lieut.-Commander FLETCHER: Will the Under-Secretary ask his right hon. Friend to bear in mind the fact that there is a very large number of aged and infirm magistrates who really never sit; and also the very varying sentences which are passed for practically identical offences, mostly motoring offences? [6th April.

CROWN COLONIES (POOR PRISONERS' DEFENCE).

Sir A. WILSON asked the Secretary of State for the Colonies whether he can state in what Crown colonies, protectorates and mandated territories persons accused of criminal offences who might, on conviction, be sentenced to death, are refused leave to be heard by counsel, distinguishing between those in which the rule is statutory and a matter of practice, respectively; and whether, in such cases, any provision exists whereby legal advice or practical assistance of any sort is afforded under poor persons rules to defendants to assist them in preparing their defence against charges brought under Crown indictments.

Mr. THOMAS: The only courts in which the right referred to is refused are those in Somaliland and certain native courts in the Protectorate of Nigeria. In both cases the refusal is a matter of practice and custom. I am aware that provision is made for giving legal aid to poor persons in a number of dependencies, but I am not able to supply a complete list without further investigation which is being made. [6th April.

Societies.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held on 1st April, at No. 60, Carey-street, London, W.C.2, with Mr. C. S. Bigg (Leicester) in the chair. The other Directors present were Sir Norman Hill, Bart., and Messrs. G. S. Blaker (Henley), P. D. Botterell, C.B.E., A. J. Cash (Derby), W. S. Clarke (Bristol), T. G. Cowan, T. S. Curtis, G. C. Daw (Exeter), E. F. Dent, G. Keith, C. W. Lee, J.P., C. G. May, R. C. Nesbitt, R. B. Pemberton, H. F. Plant, W. N. Riley (Brighton), A. B. Urmston (Maidstone), H. White (Winchester), and the Secretary. £1,531 10s. 9d. was distributed in grants to necessitous cases; seven new members were admitted; and other general business was transacted.

The Law Society's School of Law.

Copies of the Annual Prospectus for the Summer Term 1935/36 and of the detailed Time-table for the Summer Term can be obtained on application to the Principal's secretary.

A new scheme of examination for the Intermediate will come into force in January, 1937. A revised scheme of lectures and classes for the new examination began at the School in October, 1935. Students should refer to the information given on pp. 2–5 of the Annual Prospectus.

The Principal (Dr. G. R. Y. Radcliffe) will be in his room to advise students on their work, on Friday, 17th April (students whose surnames commence with the letters A–K), and Monday, 20th April (students whose surnames commence with the letters L–Z), from 10.30 a.m. to 12.30 p.m., and from 2 p.m. to 5 p.m. The first lectures will be held on 22nd April.

For Intermediate students finishing their courses under the old scheme there will be a course on Criminal Law and Procedure and Civil Procedure. Under the new scheme there will be courses on (i) Public Law (The Courts of Justice), (ii) The Law of Property in Land (continued from last term), (iii) Torts, and (iv) Outline of Accounts and Book-keeping.

Teaching for the new Final Examination will begin in the School in October, 1936, and the first examination under the new scheme will take place in November, 1938.

The subjects for Final students in the approaching term will be (i) Equity and Procedure in the Chancery Division, (ii) Torts, and (iii) Bailments and Negotiable Instruments. There will be courses on (i) Torts, and (ii) Private International Law, for Honours and Final LL.B. students; and on (i) Constitutional Law (II) and (ii) Elementary Equity for Intermediate LL.B. students.

Intermediate students must notify the Principal's secretary before 17th April, on the entry form, whether they wish to take morning or afternoon classes.

Students can obtain copies of the regulations (and entry form) governing the three studentships of £140 a year each, offered by the Council for award in July, 1936, on application to the Principal's secretary.

Draft Rules and Orders.

THE CHANCERY OF LANCASTER (SOLICITORS REMUNERATION) RULES, 1936. Dated 1936.

The Right Honourable Sir John Davidson, G.C.V.O., C.H., C.B., M.P., Chancellor of the Duchy and County Palatine of Lancaster with the advice and consent of Sir Courthope Wilson, Kt., K.C., the Vice-Chancellor of the said County Palatine and with the approval of the Authority empowered to make rules for the Supreme Court in pursuance of the powers and authorities in that behalf given to him by the Chancery of Lancaster Acts, 1850 to 1890, and all other powers and authorities enabling him in that behalf doth hereby order and direct as follows:—

1. The following amendments shall be made in The Chancery of Lancaster (Solicitors Remuneration) Rules, 1932*:—

(*a*) In sub-paragraph (*b*) of Rule 2 after the words "October 1932" there shall be inserted the words "and before the 13th day of April 1936."

(*b*) After sub-paragraph (*b*) of Rule 2 the following sub-paragraph shall be inserted and shall stand as sub-paragraph (*c*):—

"(*c*) if done after the 12th day of April 1936 by 33⅓ per centum."

2. These Rules may be cited as the Chancery of Lancaster (Solicitors Remuneration) Rules 1936 and shall come into force on the day of 1936.

Dated the day of 1936.

* S.R. & O. 1932 (No. 735) p.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve that the honour of Knighthood be conferred upon Mr. TERENCE JAMES O'CONNOR, K.C., M.P., on his appointment to be Solicitor-General.

Mr. A. M. Coutanche, the Attorney-General of Jersey, having been appointed Bailiff of that Island, the King has been pleased to approve a recommendation of the Home Secretary that Mr. CHARLES WALTER DURET AUBIN, the Solicitor-General, shall be appointed to the vacant office of Attorney-General, and that Mr. CECIL STANLEY HARRISON shall be appointed Solicitor-General in succession to Mr. Duret Aubin.

The Colonial Office announces the following appointments and promotions in the Colonial Legal Service:—

Mr. R. COPLAND (President, District Court), appointed Puisne Judge, Palestine.

Mr. O. C. K. CORRIE, M.C. (Senior Puisne Judge, Palestine), appointed Chief Justice, Fiji and Chief Judicial Commissioner for the Western Pacific.

Captain P. E. J. CRESSALL, M.C. (Relieving President, District Court), appointed President, District Court, Palestine.

Captain D. EDWARDS (Relieving President, District Court), appointed President, District Court, Palestine.

Mr. C. A. HOOPER (Judicial Adviser, Trans-Jordan), appointed Procureur and Advocate-General, Mauritius.

Mr. A. H. ROBERTS (Chief Police Magistrate, Fiji), appointed Magistrate and Crown Counsel, Zanzibar.

Dr. P. BARLOW, barrister-at-law, has been appointed Deputy Coroner for the Central District of London. Dr. Barlow was called to the Bar by the Middle Temple in 1921.

Mr. L. J. MCEVOY, Deputy Town Clerk of Leicester, has been appointed Town Clerk in succession to Mr. H. A. Pritchard, who is retiring. Mr. McEvoy was admitted a solicitor in 1910.

Mr. JOHN WILLIAM DAWSON has been appointed Deputy Town Clerk of Godmanchester.

Mr. JOSEPH KIRKLAND, solicitor, of Saltcoats, has been appointed an Honorary Sheriff-Substitute for the County of Ayr.

Mr. Percy H. Clarke, who recently retired from the chairmanship of the Bench at Wimbledon, was at the court last Saturday presented with a chair by his fellow-magistrates, and with an oak desk and a book containing the names of all the magistrates at Wimbledon by the staff.

Professional Announcements.

(2s. per line.)

WHITE & LEONARD & NICHOLLS & Co., of 4, St. Bride-street, Ludgate Circus, E.C.4, announce that as from 1st April, 1936, they have taken into partnership Mr. EDWARD PHILIP SHAW, M.A. (Cantab.). The name of the firm will remain unchanged.

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

A subsidence under the south-west corner of Middle Temple Hall last year cracked the west wall in several places. This wall is now being repaired, and the operations will occupy some months.

The General Council of the Bar has resolved unanimously to send on behalf of the Bar to Sir Thomas Inskip, K.C., M.P., a message expressing the pride and gratification that the head of the Bar has been chosen to fill the onerous and responsible position of Minister for the Co-ordination of Defence.

"I think it should be known," said Lord Justice Slesser in the Court of Appeal last Monday, "that this court is hearing appeals which were set down only one month ago. The last case in to-day's list was set down on 5th March, and it is now 6th April. When people talk about delays in this court, it is as well that these facts should be known, so far as the workmen's compensation appeals list is concerned."

The court of directors of the Royal Exchange Assurance having paid a dividend of 11 per cent. (less income tax) on the 6th November last on account of the next accruing dividend, recommend the annual general court, to be held on the 22nd April, to order the payment on the 6th May next of a further dividend of 19 per cent. (less income tax), making 30 per cent. (less income tax) on the capital stock of the corporation for the year.

The report of the Income-tax Codification Committee was issued last Monday in two volumes. The committee were appointed on 31st October, 1927, by Mr. Churchill, then Chancellor of the Exchequer, "to prepare a draft of a Bill or Bills to codify the law relating to income-tax, with the special aim of making the law as intelligible to the taxpayer as the nature of the legislation admits, and with power for that purpose to suggest any alterations which, while leaving substantially unaffected the liability of the taxpayer, the general system of administration and the powers and duties of the various authorities concerned therein, would promote uniformity and simplicity."

High Court of Justice.

EASTER VACATION, 1936.

NOTICE.

There will be no sitting in Court during the Easter Vacation.

During the Easter Vacation all Applications "which may require to be immediately or promptly heard," are to be made to the Honourable Mr. Justice HILBERY.

The Honourable Mr. Justice HILBERY will act as Vacation Judge from Thursday, April 9th to Monday, April 20th, 1936, both days inclusive. His Lordship will sit in King's Bench Judges' Chambers on Thursday, April 16th at 11 o'clock. On other days within the above period, applications in urgent matters may be made to his Lordship, personally or by post.

When applications are made by post the brief of counsel should be sent to the Judge, by post or rail prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute, on a separate sheet of paper, signed by counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows:—"Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2."

The papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at the Chancery Registrar's Chambers, Room 136, Royal Courts of Justice.

Chancery Registrars' Chambers,
Royal Courts of Justice.
April, 1936.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 23rd April, 1936.

	Div. Months.	Middle Price 6 April 1936.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	115½	3 9 3	2 19 10
Consols 2½%	JAJO	85½	2 18 8	—
War Loan 3½% 1952 or after ..	JD	107¼	3 5 3	2 19 0
Funding 4% Loan 1960-90	MN	117½xd	3 8 1	2 19 4
Funding 3% Loan 1959-69	AO	103⅝	2 17 11	2 15 8
Victory 4% Loan Av. life 23 years ..	MS	115½	3 9 3	3 1 0
Conversion 5% Loan 1944-64 ..	MN	118¾xd	4 4 2	2 4 10
Conversion 4½% Loan 1940-44 ..	JJ	111½	4 0 9	2 1 2
Conversion 3½% Loan 1961 or after .	AO	107	3 5 5	3 1 11
Conversion 3% Loan 1948-53 ..	MS	105	2 17 2	2 10 3
Conversion 2½% Loan 1944-49 ..	AO	101¾	2 9 1	2 5 0
Local Loans 3% Stock 1912 or after ..	JAJO	96¾	3 2 0	—
Bank Stock	AO	375	3 4 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	86½	3 3 7	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96½	3 2 2	—
India 4½% 1950-55	MN	117	3 16 11	3 0 0
India 3½% 1931 or after	JAJO	97½	3 11 10	—
India 3% 1948 or after	JAJO	85½	3 10 2	—
Sudan 4½% 1939-73 Av. life 27 years	FA	120	3 15 0	3 7 3
Sudan 4% 1974 Red. in part after 1950	MN	117½	3 8 1	2 11 7
Tanganyika 4% Guaranteed 1951-71	FA	115	3 9 7	2 15 4
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	110	4 1 10	2 10 4
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	111	3 12 1	3 4 4
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3 12 1	3 7 4
Canada 4% 1953-58	MS	112	3 11 5	3 1 7
*Natal 3% 1929-49	JJ	102	2 18 10	—
*New South Wales 3½% 1930-50 ..	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	101	2 19 5	2 17 6
Nigeria 4% 1963	AO	113	3 10 10	3 5 8
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	109	3 4 3	2 16 6
*Victoria 3½% 1929-49	AO	100	3 10 0	3 10 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	97	3 1 10	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	108	3 4 10	2 17 10
Leeds 3% 1927 or after	JJ	96	3 2 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase ..	JAJO	107	3 5 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	81	3 1 9	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96	3 2 6	—
Manchester 3% 1941 or after ..	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49 ..	MJSD	100½	2 9 9	—
Metropolitan Water Board 3% "A" 1963-2003	AO	96	3 2 6	3 2 10
Do. do. 3% "B" 1934-2003 ..	MS	97	3 1 10	3 2 1
Do. do. 3% "E" 1953-73 ..	JJ	101	2 19 5	2 18 5
†Middlesex County Council 4% 1952-72	MN	113xd	3 10 10	3 0 2
† Do. do. 4½% 1950-70	MN	116xd	3 17 7	3 2 11
Nottingham 3% Irredeemable ..	MN	95xd	3 3 2	—
Sheffield Corp. 3½% 1968	JJ	106	3 6 0	3 3 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	114½	3 9 10	—
Gt. Western Rly. 4½% Debenture ..	JJ	127½	3 10 7	—
Gt. Western Rly. 5% Debenture ..	JJ	140½	3 11 2	—
Gt. Western Rly. 5% Rent Charge ..	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	130½	3 16 8	—
Gt. Western Rly. 5% Preference ..	MA	119½	4 3 8	—
Southern Rly. 4% Debenture ..	JJ	113½	3 10 6	—
†Southern Rly. 4% Red. Deb. 1962-67	JJ	115½	3 9 3	3 2 4
Southern Rly. 5% Guaranteed ..	MA	131½	3 16 1	—
Southern Rly. 5% Preference ..	MA	120½	4 3 0	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.